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Clerk of the Superior Court
By E- Filing, Deputy Clerk

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; and DOES 1-
10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1 THROUGH
10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: The Honorable Joel R. Wohlfeil
Dept.: C-73

**NOTICE OF ERRATA TO MEMORANDM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR NEW TRIAL**

Hearing Date: October 25, 2019
Time: 9:00 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

Action Filed: March 21, 2017
Trial Date: June 28, 2019

TO THE COURT, AND TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

PLEASE TAKE NOTICE that Defendant/Cross-Complainant Darryl Cotton hereby respectfully submits this Notice of ERRATA to his Memorandum of Points and Authorities in Support of Motion or New Trial.

///

///

1 Due to a clerical error, an incomplete draft of the Memorandum of Points and Authorities
2 in Support of Motion for New Trial was uploaded for electronic filing and service instead of the
3 true final copy and, as such, the Table of Authorities in the draft was incomplete, the document
4 was not executed and the exhibits referenced therein were not attached.

5 Attached hereto and incorporated therein by this reference are true and correct copies of
6 the following which shall constitute in and of themselves the ERRATA to the Memorandum of
7 Points and Authorities in Support of Motion and Motion for New Trial:

8 **Exhibit A** – The Table of Authorities;

9 **Exhibit B** – The execution page bearing Attorney Schube’s signature; and

10 **Exhibit C** – Exhibits A through M, inclusive.

11
12 DATED: September 14, 2019

TIFFANY & BOSCO, P.A.

13
14 By _____



15 EVAN P. SCHUBE
16 Attorney for Defendant/Cross-Complainant
17 DARRYL COTTON
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EXHIBIT A

TABLE OF AUTHORITIES

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EXHIBIT B

1 asserted privilege in discovery). Mr. Geraci has previously admitted that failure to disclose constitutes
2 “substantial prejudice.” *Plaintiff Larry Geraci’s Memorandum of Points and Authorities in Opposition*
3 *to Defendant Darryl Cotton’s Motion to Expunge Lis Pendens* dated April 10, 2018 (ROA 179) at 4:7-
4 8. (Mr. Geraci claimed that Cotton’s “refusal to participate in discovery has substantially prejudiced
5 Geraci and Berry in preparation of this case.”).

6 Mr. Cotton propounded discovery seeking, among other things, documents and communications
7 by and between Mr. Geraci and Ms. Austin related to the purchase of the Property. (See **Exhibit I**
8 (Discovery Responses) at 13:1-13, 14:8-23.) No documents or communications were produced in
9 connection with the request based upon attorney-client privilege. Then, at trial, Mr. Geraci waived
10 privilege and he and Ms. Austin testified as to the very communications Mr. Cotton previously sought.

11 Mr. Geraci’s use of the privilege as a shield and a sword violated Mr. Cotton’s right to a fair and
12 impartial trial. One of the central arguments Mr. Cotton presented was that the parties agreed to draft a
13 final agreement. While Mr. Geraci’s conduct was consistent with this argument, he and Ms. Austin
14 testified at trial that Mr. Geraci’s request for draft agreements was purportedly the result of extortion.
15 The failure to disclose those documents constitutes, as Mr. Geraci previously admitted, substantial
16 prejudicial to Mr. Cotton because it prevented Mr. Cotton from cross-examining Mr. Geraci and
17 Ms. Austin on their inflammatory and prejudicial extortion allegations, as well as proving that the
18 alleged November 2, 2016 agreement was an agreement to agree. Mr. Geraci cannot be permitted to
19 “blow hot and cold.”

20 CONCLUSION

21 For the reasons set forth herein, Mr. Cotton requests that the Court (i) find that the alleged
22 November 2, 2016 agreement is illegal and void; or (ii) order a new trial and enable Mr. Cotton to
23 conduct discovery related to the communications between Messrs. Geraci and Cotton.

24 DATED this 15th day of September, 2019.

25 TIFFANY & BOSCO, P.A.


26
27 By 
28 EVAN P. SCHUBE
Attorneys for Defendant/Cross-Complainant
Darryl Cotton

EXHIBIT C

EXHIBIT A

1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF SAN DIEGO, CENTRAL DIVISION
3 Department 73 Hon. Joel R. Wohlfeil
4
5 LARRY GERACI, an individual,)
6 Plaintiff,)
7 vs.) 37-2017-00010073-CU-BC-CTL
8 DARRYL COTTON, an individual;)
9 and DOES 1 through 10,)
10 inclusive,)
11 Defendants.)
12 _____)
13 AND RELATED CROSS-ACTION.)
14 _____)

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16 Reporter's Transcript of Proceedings

17 JULY 3, 2019
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25 Reported By:

26 Margaret A. Smith, CSR 9733, RPR, CRR

27 Certified Shorthand Reporter

28 Job No. 10057773

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**OPENING STATEMENT BY MICHAEL R. WEINSTEIN
ON BEHALF OF PLAINTIFF/CROSS-DEFENDANT
LARRY GERACI
(RT 14:26 – 16:24, 56:25 – 57:11)**

1 witnesses. And the lawyers are working hard to have as
2 many witnesses lined up. Some of them will take a
3 little longer, like the parties. But you'll be seeing a
4 steady stream of witnesses through and including
5 Plaintiff and the defendant's case in chief.

6 So I'll keep you up to date on where we are in
7 the estimate, but as mentioned before, we will get you
8 the case at or before the close of business Thursday,
9 July 18th.

10 So it's now time for counsel to give an opening
11 statement. I mentioned to you yesterday that nothing
12 the lawyers say during the trial is evidence. The only
13 thing you're going to base your decision on ultimately
14 is the evidence and, of course, the law that I give to
15 you. But what they say in their opening statement will
16 give you an idea of what they expect the evidence to
17 consist of, at least from their perspective.

18 So with that in mind, Counsel, whenever you're
19 ready, please give your opening statement.

20 MR. WEINSTEIN: Thank you, your Honor.

21 (Opening statement on behalf of
22 Plaintiff/Cross-Defendant Larry Geraci)

23 MR. WEINSTEIN: Good morning, Mr. Dunbar, and
24 the rest of the jurors. Thank you for your patience
25 through jury selection yesterday. As your Honor has
26 just reminded you, nothing I say is evidence. It's what
27 I believe the evidence will show. So if I make a
28 statement and I don't preface it by saying the testimony

1 will show, it's really in front of every sentence
2 because I'm not a witness.

3 Now, it's my opportunity, as you were
4 pre-instructed yesterday, to present an opening
5 statement. It's really an outline, a road map of what I
6 expect the evidence will show, and it's going to allow
7 you to keep an overview of the case in mind during the
8 later presentation of evidence.

9 Evidence comes in out of order. These facts
10 are going -- the facts you'll hear are going to be new
11 to you for the first time. We've known them for a long
12 time. And as a result, it will take you a while to put
13 them all together. But when it's said and done,
14 hopefully, the overview I've presented to you will help
15 you understand the case as it's presented.

16 Now, as I mentioned in the mini opening
17 yesterday, this case involves a dispute between Larry
18 Geraci and Darryl Cotton concerning an agreement from
19 the purchase and sale of Mr. Cotton's property at 6176
20 Federal Boulevard.

21 Now, Mr. Geraci and Mr. Cotton dispute the
22 terms of the agreement. During my opening, I'll refer
23 to and show you some of the documents. These are some
24 of the exhibits that I anticipate you will see during
25 the evidence portion of the case. It will help me with
26 my overview and help you.

27 But before I jump into the story -- before I do
28 that, the setup is with the screen over here. And we

1 have jurors all the way extending to almost even with
2 me. If anybody at any time has trouble seeing the
3 screen, just give us a heads-up, and we'll make an
4 adjustment and move the attorneys back and forth to make
5 it clear.

6 So, anyway, before I jump into the story, I
7 need to introduce you briefly to some of the persons
8 whose names will come up in the testimony and who may
9 give testimony in the case. And there's eight people in
10 particular. I just want to identify it from the outset.

11 Of course, there's Darryl Cotton, who is the
12 defendant and cross-complainant. He was the seller of
13 the property. Mr. Cotton has developed hydroponic
14 systems for the growing of cannabis. He's very active
15 in the community regarding cannabis issues. You'll
16 learn more about that later.

17 Mr. Geraci, sitting in front of me next to the
18 bench, is the buyer. He owns a tax and financial
19 accounting business called The Tax and Financial Center.
20 He's been doing tax preparation work for about 40 years.
21 So that's basically been his profession his whole
22 career. He's licensed as an enrolled agent. This means
23 he has a federal license that allows him to represent
24 clients before the IRS.

25 And that will become an issue that you will
26 hear about later in the case.

27 Rebecca Berry, who sits to my left, because we
28 don't have room for everybody, who is sitting in the

1 Q And are you currently employed?

2 A Yes.

3 Q Before I get there, did you -- did you graduate

4 from high school?

5 A Yes.

6 Q Where?

7 A University High School.

8 Q When?

9 A 1979.

10 Q Okay. And did you attend college at all?

11 A Yes.

12 Q What college did you attend?

13 A Grossmont and San Diego City.

14 Q Did you receive a degree from either of those

15 institutions?

16 A No, I didn't.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom? By whom?

20 A Tax and Financial Center.

21 Q And what type of business is Tax and Financial

22 Center?

23 A We prepare tax returns and bookkeeping services

24 and payroll services.

25 Q And who owns that business?

26 A I do.

27 Q And how long have you owned that business?

28 A I've owned that business since 2001.

1 Q And currently how many employees do you have?

2 A Eight employees.

3 Q Before I forget, how long have you been engaged
4 in preparing taxes for people?

5 A Forty years.

6 Q Now, you said you have eight employees. Are
7 they divided into any departments within your business?

8 A Yes. I've got two employees in accounting, one
9 employee in payroll. I've got two administrators and
10 two more people in bookkeeping.

11 Q So when you say you have two people in
12 accounting, what services do the people in accounting
13 provide?

14 A Bookkeeping.

15 Q For whom?

16 A Businesses.

17 Q Okay. And the other folks are in the tax
18 preparation side of the business?

19 A Yes.

20 Q Okay. And who do they prepare taxes for?

21 A My clients.

22 Q And who -- what types of clients?

23 A Individuals and businesses, small corporations,
24 and small partnerships.

25 Q Okay. Now, do you currently hold any licenses
26 associated with tax preparation?

27 A Enrolled agent.

28 Q Is the answer yes?

1 A Yes.

2 Q And what license do you hold?

3 A Enrolled agent.

4 Q What is an enrolled agent?

5 A We are licensed by the Internal Revenue Service
6 to represent clients when they get audited by the IRS.

7 Q And is that a federal, or state license?

8 A That's a federal license.

9 Q And how long have you been licensed by -- as an
10 enrolled agent?

11 A Since 1999.

12 Q Now, have -- do you have a real estate license
13 currently?

14 A Yes. No. No.

15 Q Have you had a real estate license?

16 A Yes.

17 Q What kind of a real estate license?

18 A Salesperson.

19 Q And when did you hold that license?

20 A From 1993 to 2017.

21 Q Okay. And during that period of time, what
22 types of -- or how many transactions have you engaged in
23 where you were acting as a real estate agent?

24 A Probably under 10 since 1993.

25 Q And of those 10, are those residential, or
26 commercial transactions, or both?

27 A Both.

28 Q Now, have you, for your personal investment,

DIRECT EXAMINATION OF LARRY GERACI
BY MICHAEL R. WEINSTEIN
(RT 58:18-19)

1 MR. WEINSTEIN: The plaintiffs call Larry
2 Geraci.

3 THE COURT: All right. Good morning,
4 Mr. Geraci.

5 Larry Geraci,
6 being called on behalf of the plaintiff, having been
7 first duly sworn, testified as follows:

8
9 THE CLERK: Please state your full name and
10 spell your first and last name for the record.

11 THE WITNESS: Larry Geraci. L-a-r-r-y
12 G-e-r-a-c-i.

13 THE COURT: All right. Thank you very much.
14 Counsel, whenever you're ready, please begin
15 your examination.

16 MR. WEINSTEIN: Thank you.

17 (Direct examination of Larry Geraci)

18 BY MR. WEINSTEIN:

19 Q **Good morning, Mr. Geraci.**

20 A Good morning.

21 Q **How old are you?**

22 A Fifty-eight.

23 Q **And are you married?**

24 A Widowed.

25 Q **Do you have any children?**

26 A Five.

27 Q **What are their ages?**

28 A 33, 28. I have 25, 19 and 12.

1 bought and sold real property?

2 A Yes, I have.

3 Q Have you served as your own real estate agent
4 in connection with any of those transactions?

5 A No.

6 Q Okay. Do you know Rebecca Berry?

7 A Yes.

8 Q And you see her in this courtroom?

9 A Yes.

10 Q And who is Rebecca Berry?

11 A She's my administrator.

12 Q And how long has she worked for you?

13 A Fourteen years.

14 Q And you said she was an administrator. What's
15 her role as an administrator?

16 A She's the front desk booking -- booking
17 clients' appointments, administering the bills when they
18 come in to the payables department. She's like the
19 gatekeeper of everything that comes into the office.

20 Q Have you ever owned a medical marijuana
21 dispensary?

22 A No, I haven't.

23 Q Have you ever operated or managed a medical
24 marijuana dispensary?

25 A No, I haven't.

26 Q Have you ever told Darryl Cotton that you owned
27 or managed a marijuana dispensary?

28 A No.

1 Q In connection with -- we'll get to it. But in
2 connection with the transaction, the sale of -- the
3 purchase and sale of his property, in connection with
4 any communications with Mr. Cotton, did you indicate to
5 him that you operated or owned multiple dispensaries?

6 A No, I didn't.

7 Q Did you talk to him about anybody within your
8 team that managed or operated dispensaries?

9 A No, I didn't.

10 Q Okay. Now, when did you first have any
11 communication with Darryl Cotton?

12 A About mid July.

13 Q And why did you contact -- first of all, what
14 year?

15 A 2016.

16 Q Why did you contact Mr. Cotton or have
17 communication with him in July of 2016?

18 A The team had identified a property on Federal
19 Boulevard that may qualify for a dispensary.

20 Q Okay. And you mentioned the team. What was
21 the team?

22 A Jim Bartell, Abhay Schweitzer, and Gina Austin.

23 Q And when did you form -- for what purposes was
24 that team formed?

25 A They were going to facilitate to proceed to get
26 the CUP on Mr. Cotton's property.

27 Q When did you first hire Mr. Bartell?

28 A In October of 2015.

1 Q Now, at that time, had you had any contact with
2 Mr. Cotton?

3 A No, I didn't.

4 Q So why did you -- well, first of all, can you
5 tell the jury who Mr. Bartell is, to your understanding.

6 A Mr. Bartell is a liaison lobbyist between
7 myself and the City.

8 MR. WEINSTEIN: Okay. I'm going to show the
9 witness a stipulated exhibit, Exhibit 1.

10 THE COURT: Any objection if Exhibit 20 is
11 admitted, Counsel?

12 MR. AUSTIN: No.

13 MR. WEINSTEIN: Exhibit 1. It's Exhibit 1.

14 THE COURT: Exhibit 1?

15 MR. WEINSTEIN: Yes.

16 THE COURT: Oh, I'm sorry. Any objection to
17 the admission of Exhibit 1?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 1 will be admitted.

20 (Premarked Joint Exhibit 1, Letter of Agreement
21 with Bartell & Associates dated 10/29/15, was
22 admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Geraci, there are books up there. If it's
25 easier for you, there are books up there.

26 THE COURT: Counsel, they may have been moved.
27 Do you want to approach?

28 MR. WEINSTEIN: If you need to look at the

DIRECT EXAMINATION OF LARRY GERACI
BY MICHAEL R. WEINSTEIN
(RT 129:22-28)

1 decide to embark upon once you got that demand on
2 February 7th?

3 A After -- after the conversation I had with --

4 Q Yes. How did you decide to proceed?

5 A I started calling people around to find out
6 about, first of all, how this is going to work out
7 because I couldn't see how it could -- it was very
8 difficult to get past that 10,000. I -- I called an
9 operator that I knew, and they were saying that is very,
10 very tough. We tried to figure out how we could get
11 that to work. And then I -- I called my attorney, Gina
12 Austin.

13 Q And what discussion did you have with -- when
14 did you call her in relation to your phone call with
15 Mr. Cotton?

16 A I think it was within a few days. This is in
17 the middle of tax season. So it's -- I have
18 appointments every hour. So I'm working 18 hours a day.
19 So I think I waited a couple days. Or maybe -- I can't
20 recall exactly. But it was within a few days, I called
21 Gina Austin.

22 Q And what did you discuss with Ms. Austin in
23 that phone call?

24 A I said that -- on the project we're working on,
25 I said Mr. Cotton is now demanding \$10,000 a month, and
26 I am not sure we can even do that. And I said it feels
27 like Mr. Cotton is extorting me at this point because we
28 just got this zoning approved.

DIRECT EXAMINATION OF LARRY GERACI
BY MICHAEL R. WEINSTEIN
(RT 193:19-194:5)

1 MR. WEINSTEIN: Thank you.

2 (Direct examination of Rebecca Berry)

3 BY MR. WEINSTEIN:

4 Q Ms. Berry, are you -- first of all, let's talk
5 about your education. Have you graduated from high
6 school?

7 A Yes.

8 Q And when?

9 A 1967.

10 Q From where?

11 A Granite Hills High School.

12 Q And did you take college after that?

13 A Some college.

14 Q Where at?

15 A Grossmont College.

16 Q And when was that?

17 A 1968 and then 10 years later, I took classes
18 probably in -- no. Fifteen years later. So --

19 Q Okay. And did you get a degree from Grossmont?

20 A No.

21 Q Okay. Other than attending Grossmont, have you
22 attended any -- any schooling since you graduated from
23 high school?

24 A Real estate and as the real estate broker
25 ministerial training.

26 Q Okay. And let's take the latter first. Would
27 you -- did you say ministerial training?

28 A Yes.

1 or broker with respect to the sale of -- the agreement
2 to sell property that's the subject of this lawsuit?

3 A No.

4 Q Okay. Were you involved at all in the
5 negotiation of -- of that agreement?

6 A No.

7 Q Do you know Darryl Cotton?

8 A No.

9 Q Have you -- when is the first time you ever saw
10 him?

11 A Yesterday in the courtroom.

12 Q Okay. Have you ever spoken to him on the
13 phone?

14 A No.

15 Q Have you ever seen him in the office?

16 A No.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom?

20 A Tax and Financial as the real estate broker and
21 through my church as a teacher and counselor.

22 Q Okay. Let's focus on Tax and Financial.

23 How long have you worked at Tax and Financial
24 Center?

25 A Almost 15 years.

26 Q And what's your current job position at Tax and
27 Financial Center?

28 A I'm an assistant to Larry Geraci, and I manage

1 the office.

2 Q And how long have you been in that position?

3 A Almost 15 years.

4 Q So the entire time you've been there?

5 A Yes.

6 Q Now, in -- as you know, this case -- do you
7 know -- do you understand this case involves an attempt
8 to obtain a CUP conditional use permit to operate a
9 dispensary at a property that Mr. Geraci was attempting
10 to purchase?

11 A Yes.

12 Q Okay. Were you the applicant on that CUP
13 application?

14 A Yes.

15 Q Okay. And as -- as the applicant -- as the
16 applicant, did you understand that you were acting at
17 all times as the agent for and on behalf of Mr. Geraci?

18 A Yes.

19 Q Why -- what was your understanding as to why
20 you were the applicant on that CUP application?

21 A Mr. Geraci has a federal license, and we were
22 afraid that it might affect it at some point.

23 Q What lines -- what federal license is that?

24 A He's an enrolled agent.

25 Q And did you have a discussion with him about
26 the fact that there was a possibility or it was unknown
27 whether him being an applicant on the property would
28 affect his enrolled agent license?

1 A Yes.

2 Q All right. Were there any other reasons that
3 you recall that you were the applicant -- chose to be
4 the applicant on the project?

5 A No.

6 Q Were you willing and -- were you willing to be
7 the applicant on the project as Mr. Geraci's agent?

8 A Yes.

9 Q Now, in connection with the CUP application
10 project, were you involved at all in the communications
11 with the City?

12 A Yes.

13 Q Okay. And what was your involvement in
14 communications with the City?

15 A They -- I -- what I would do is if I got any
16 information, I would simply direct it to Mr. Geraci or
17 his team.

18 Q Okay.

19 A And then I made no decisions.

20 Q Okay. And so did you also have any
21 communications with the team that Mr. Geraci had put
22 together to pursue the CUP application?

23 A I had some interaction.

24 Q And -- and which members of the team do you
25 recall having interaction with?

26 A Abhay.

27 Q That's Mr. Schweitzer?

28 A Mr. Schweitzer.

1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 215, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 3, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 22nd day of July 2019.

13
14
15 Margaret A. Smith, CSR No. 9733, RPR, CRR

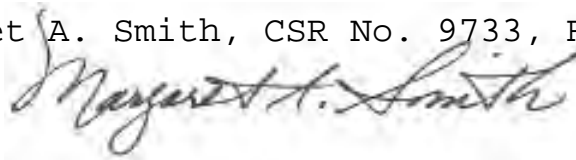
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EXHIBIT B

FILED
Clerk of the No Fee GC \$6103
OCT 27 2014
By: DEJELLISON, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

v.

THE TREE CLUB COOPERATIVE, INC., a
California corporation;
JONAH McCLANAHAN, an individual;
JOHN C. RAMISTELLA, an individual;
JL 6th AVENUE PROPERTY, LLC, a
California limited liability company;
LAWRENCE E. GERACI, also known as
LARRY GERACI, an individual;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2014-00020897-CU-MC-CTL

JUDGE: RONALD S. PRAGER

STIPULATION FOR ENTRY OF FINAL
JUDGMENT AND PERMANENT
INJUNCTION; JUDGMENT THEREON
[CCP § 664.6]

IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its
attorneys, Jan I. Goldsmith, City Attorney, and by Marsha B. Kerr, Deputy City Attorney, and
Defendants JL 6th AVENUE PROPERTY, LLC, a California limited liability company;
LAWRENCE E. GERACI, aka LARRY GERACI, an individual; and JEFFREY KACHA, an
individual, appearing by and through their attorney, Joseph S. Carmellino, enter into the
following Stipulation for Entry of Final Judgment in full and final settlement of the above-
captioned case without trial or adjudication of any issue of fact or law, and agree that a final
judgment may be so entered:

L:\CEU\CASE.ZNI\762.mk\pleadings\Stip JL 6th, Kacha,
Geraci.docx

1

STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION

1 1. This Stipulation for Entry of Final Judgment (Stipulation) is executed between and
2 among Plaintiff City of San Diego, a municipal corporation, and Defendants JL 6th AVENUE
3 PROPERTY, LLC; LAWRENCE E. GERACI, aka LARRY GERACI; and JEFFREY KACHA
4 only, who are named parties in the above-entitled action (collectively, "Defendants").

5 2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court
6 of the State of California for the County of San Diego, entitled *City of San Diego, a municipal*
7 *corporation v., The Tree Club Cooperative, Inc., a California corporation; Jonah McClanahan,*
8 *an individual; John C. Ramistella, an individual; JL 6th Avenue Property, LLC, a California*
9 *limited liability company; Lawrence E. Geraci, also known as Larry Geraci, an individual;*
10 *Jeffrey Kacha, an individual; and DOES 1 through 50, inclusive,* Case No. 37-2014-00020897-
11 CU-MC-CTL. This Stipulation does not affect *City of San Diego v. Tycel Cooperative, Inc., et al.,*
12 San Diego Superior Court case No. 37-2014-00025378-CU-MC-CTL, which is a separate case to
13 be considered separately.

14 3. The parties wish to avoid the burden and expense of further litigation and accordingly
15 have determined to compromise and settle their differences in accordance with the provisions of
16 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein
17 shall be deemed to constitute an admission or an adjudication of any of the allegations of the
18 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and
19 only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent
20 Injunction by the Superior Court.

21 4. The address where the tenant Defendants were maintaining a marijuana dispensary
22 business is 1033 Sixth Avenue, San Diego, California, 92101, also identified as Assessor's Parcel
23 Number 534-186-04-00 (PROPERTY).

24 5. The PROPERTY is owned by JL 6th AVENUE PROPERTY, LLC (JL), according to
25 San Diego County Recorder's Grant Deed, Document No. 2012-0184893, recorded March 29,
26 2012. Defendants GERACI and KACHA are members of JL and hereby certify they have
27 authority to sign for and bind JL herein.

28 ///

THE NORTH HALF OF LOT D IN BLOCK 34 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 522 OF DEEDS, IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY.

7. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

8. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

a. Keeping, maintaining, operating, or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.

b. Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.

DEFENDANTS agree to do the following at the **PROPERTY**:

9. Within 24 hours from the date of signing this Stipulation, cease maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

1 10. The Parties acknowledge that where local zoning ordinances allow the operation of a
2 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
3 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
4 cooperative in the City of San Diego as authorized under the law after Defendants provide the
5 following to Plaintiff in writing:

- 6 a. Proof that the business location is in compliance with the ordinance; and
7 b. Proof that any required permits or licenses to operate a marijuana dispensary,
8 collective or cooperative have been obtained from the City of San Diego as required by the
9 SDMC.

10 11. If the marijuana dispensary that is operating at the PROPERTY, including but
11 not limited to, The Tree Club Cooperative, Inc., Jonah McClanahan and John C.
12 Ramistella, does not agree to immediately voluntarily vacate the premises, then within 24
13 hours from the date of signing this Stipulation, DEFENDANTS shall in good faith use all legal
14 remedies available to evict the marijuana dispensary business known as The Tree Club
15 Cooperative, Inc., Jonah McClanahan and John C. Ramistella or the appropriate party responsible
16 for the leasehold and operation of the marijuana dispensary, including but not limited to,
17 prosecuting an unlawful detainer action.

18 12. Within 24 hours from the date of signing this Stipulation, remove all signage from
19 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
20 signage advertising The Tree Club Cooperative.

21 13. Within 24 hours from the date of signing this Stipulation, post a sign for a
22 minimum of 60 calendar days, conspicuously visible from the exterior of the PROPERTY stating
23 in large bold font and capital letters that can be seen from the public right way, that "The Tree
24 Club Cooperative" is permanently closed and that there is no dispensary operating at this address.

25 14. Allow personnel from the City of San Diego access to the PROPERTY to inspect for
26 compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of
27 8:00 a.m. and 5:00 p.m.

15. When this Stipulation has been filed with the Court, Jeffrey Kacha will personally pick up a conformed copy of the Stipulation and Order from the Office of the City Attorney. He or his attorney will contact the City's investigator, Connie Johnson, at 619-533-5699 within 15 days of the filing of this Stipulation to set a time for Mr. Kacha to pick up the conformed copy.

MONETARY RELIEF

16. Within 15 calendar days from the date of signing this Stipulation, Defendants shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of \$281.93. Payment shall be in the form of a certified check, payable to the "City of San Diego," and shall be in full satisfaction of all costs associated with the City's investigation of this action to date. The check shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

17. Commencing within 30 days of signing this Stipulation, Defendants shall pay to Plaintiff City of San Diego civil penalties in the amount of \$25,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **\$19,000 of these penalties is immediately suspended.** These suspended penalties shall only be imposed if Defendants fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties in the amount of \$6,000 shall be paid in 15 monthly installments of \$400.00 each, at 30-day intervals following the date of the first payment as specified above, in the form of a certified check, payable to the "City of San Diego," and delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: Marsha B. Kerr.

ENFORCEMENT OF JUDGMENT

18. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the

1 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing
2 legal rate from the date of default until paid in full.

3 19. Nothing in this Stipulation shall prevent any party from pursuing any remedies as
4 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,
5 including criminal prosecution and civil penalties that may be authorized by the court according
6 to the SDMC at a cumulative rate of up to \$2,500 per day per violation.

7 20. Defendants agree that any act, intentional or negligent, or any omission or failure by
8 their contractors, successors, assigns, partners, members, agents, employees or representatives to
9 comply with the requirements set forth in Paragraphs 8-17 above will be deemed to be the act,
10 omission, or failure of Defendants and shall not constitute a defense to a failure to comply with
11 any part of this Stipulation. Further, should any dispute arise between any contractor, successor,
12 assign, partner, member, agent, employee or representative of Defendants for any reason,
13 Defendants agree that such dispute shall not constitute a defense to any failure to comply with
14 any part of this Stipulation, nor justify a delay in executing its requirements.

15 **RETENTION OF JURISDICTION**

16 21. The Court will retain jurisdiction for the purpose of enabling any of the parties to this
17 Stipulation to apply to this Court at any time for such order or directions that may be necessary or
18 appropriate for the construction, operation or modification of the Stipulation, or for the
19 enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

20 **RECORDATION OF JUDGMENT**

21 22. A certified copy of this Judgment shall be recorded in the Office of the San Diego
22 County Recorder pursuant to the legal description of the PROPERTY.

23 **KNOWLEDGE AND ENTRY OF JUDGMENT**

24 23. By signing this Stipulation, Defendants admit personal knowledge of the terms set
25 forth herein. Service by mail shall constitute sufficient notice for all purposes.

26 ///

24. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: OCT. 21, 2014

JAN I. GOLDSMITH, City Attorney

By

Marsha B. Kerr
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 7/26 2014

JL 6TH AVENUE PROPERTY, LLC

By

[Signature]
Member

Dated: 10-21-14 2014

[Signature]
Lawrence E. Geraci aka Larry Geraci, an individual

Dated: 9/26 2014

[Signature]
Jeffrey Kacha

Dated: 9/26 2014

[Signature]
Joseph S. Carnellino, Attorney for
Defendants JL 6th Avenue Property, LLC,
Lawrence E. Geraci aka Larry Geraci and
Jeffrey Kacha

///

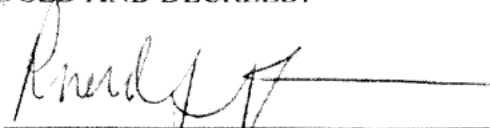
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ORDER

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 10/27/14



JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

EXHIBIT C

FILED
Clerk of the Superior Court

JUN 17 2015

FILED
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy
15 JUN 11 PM 1:37

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

v.

CCSQUARED WELLNESS COOPERATIVE,
a California corporation;
BRENT MESNICK, an individual;
JL INDIA STREET, LP, formerly known as JL
INDIA STREET, LLC;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2015-00004430-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL
JUDGMENT AND PERMANENT
INJUNCTION; JUDGMENT THEREON
[CCP § 664.6]

IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered.

///

1 2. The parties to this Stipulation are parties in two civil actions pending in the Superior
2 Court of the State of California for the County of San Diego. It is the intention of the parties that
3 the terms of this Stipulation constitute a global settlement of the following cases:

4 a. *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-
5 00004430-CU-MC-CTL.

6 b. *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-
7 000000972.

8 3. The parties wish to avoid the burden and expense of further litigation and accordingly
9 have determined to compromise and settle their differences in accordance with the provisions of
10 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein
11 shall be deemed to constitute an admission or an adjudication of any of the allegations of the
12 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and
13 only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent
14 Injunction by the Superior Court.

15 4. The address where the Defendants were maintaining a marijuana dispensary business
16 at all times relevant to this action is 3505 Fifth Avenue, San Diego, also identified as Assessor's
17 Parcel Number 452-407-17-00 (PROPERTY). The PROPERTY is currently owned by JL INDIA
18 STREET, LP, formerly known as JL INDIA STREET, LLC.

19 5. The legal description of the PROPERTY is:

20 Lot 3 in block 45 of loma grande, in the city of San Diego, County of San
21 Diego, State of California, according to Map thereof No. 692, filed in the
Office of the County Recorder of San Diego County, November 23, 1891.

22 6. This action is brought under California law and this Court has jurisdiction over the
23 subject matter, the PROPERTY, and each of the parties to this Stipulation.

24 INJUNCTION

25 7. The provisions of this Stipulation are applicable to Defendants, their successors and
26 assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or
27 other entities acting by, through, under or on behalf of Defendants, and all persons acting in
28 concert with or participating with Defendants with actual or constructive knowledge of this

1 Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,**
2 Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San
3 Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil
4 Procedure section 526, and under the Court's inherent equity powers, from engaging in or
5 performing, directly or indirectly, any of the following acts:

6 Keeping, maintaining, operating or allowing any commercial, retail, collective,
7 cooperative or group establishment for the growth, storage, sale or distribution of marijuana,
8 including, but not limited to, any marijuana dispensary, collective or cooperative organized
9 anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to
10 the San Diego Municipal Code.

11 COMPLIANCE MEASURES

12 DEFENDANTS agree to do the following at the PROPERTY:

13 8. **Immediately** cease maintaining, operating, or allowing any commercial, retail,
14 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
15 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
16 organized pursuant to the California Health and Safety Code.

17 9. The Parties acknowledge that where local zoning ordinances allow the operation of a
18 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
19 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
20 cooperative in the City of San Diego as authorized under the law after Defendants provide the
21 following to Plaintiff in writing:

22 a. Proof that the business location is in compliance with the ordinance; and

23 b. Proof that any required permits or licenses to operate a marijuana dispensary,
24 collective or cooperative have been obtained from the City of San Diego as
25 required by the SDMC.

26 10. **Within 24 hours from the date of signing this Stipulation,** remove all signage from
27 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
28 signage advertising CCSquared Wellness Cooperative or CCSquared Storefront.

11. No later than 48 hours from signing this Stipulation cease advertising on the internet, magazines or through any other medium the existence of CCSquared Wellness Cooperative or CCSquared Storefront at the PROPERTY.

- 12. No later than 48 hours from signing this Stipulation remove all fixtures, items and property associated with a marijuana dispensary business from the PROPERTY.

13. **Within one week of signing this Stipulation**, Defendant will contact City zoning investigator Leslie Sennett at 619-236-6880 to schedule an inspection of the PROPERTY.

MONETARY RELIEF

14. Defendants, jointly and severally, shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of \$2,438.03. All other attorney fees and costs expended by the parties in the above-captioned case are waived by the parties. The parties agree that payment in full of the monetary amount referenced as investigative costs is applicable to and satisfies payment of investigative costs for both cases referenced in paragraph 2 above.

15. Defendants shall jointly and severally pay to Plaintiff City of San Diego civil penalties in the amount of \$75,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **\$37,500 of these penalties is immediately suspended.** Payment in the amount of \$37,500 in civil penalties plus \$2438.03 in investigative costs referenced in paragraph 14, totaling \$39,938.03, shall be made in 24 monthly installments of \$1,664.09 each beginning on or before June 5, 2015, and continuing on the fifth of each successive month until paid in full. Receipt of Defendants' initial monthly payment of \$1,664.09 on June 4, 2015 is acknowledged. The parties agree that payment in full of the monetary amounts referenced as civil penalties is applicable to and satisfies payment of civil penalties for both of the cases referenced in paragraph 2 above. All payments shall be made in the form of a certified check payable to the "City of San Diego," and shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

///

16. The suspended penalties shall only be imposed if Defendants fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis.

ENFORCEMENT OF JUDGMENT

17. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid in full. Service by mail shall constitute sufficient notice for all purposes.

18. Nothing in this Stipulation shall prevent any party from pursuing any remedies as provided by law to subsequently enforce this Stipulation or the provisions of the SDMC, including criminal prosecution and civil penalties that may be authorized by the court according to the SDMC at a cumulative rate of up to \$2,500 per day per violation occurring after the execution of this Stipulation.

19. Defendants agree that any act, intentional act, omission or failure by their contractors, successors, assigns, partners, members, agents, employees or representatives on behalf of Defendants to comply with the requirements set forth in Paragraphs 7-15 above will be deemed to be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to comply with any part of this Stipulation. Further, should any dispute arise between any contractor, successor, assign, partner, member, agent, employee or representative of Defendants for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to comply with any part of this Stipulation, nor justify a delay in executing its requirements.

RETENTION OF JURISDICTION

20. The Court will retain jurisdiction for the purpose of enabling any of the parties to this Stipulation to apply to this Court at any time for such order or directions that may be necessary or appropriate for the construction, operation or modification of the Stipulation, or for the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

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RECORDATION OF JUDGMENT

21. This Stipulation shall not be recorded unless there is an uncured breach of the terms herein, in which instance a certified copy of this Stipulation and Judgment may be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

22. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by regular mail shall constitute sufficient notice for all purposes.

23. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

By Marsha B. Kerr

Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 6-10, 2015

JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC

By Jeffrey Kacha

General Partner

Dated: 6-10, 2015

Jeffrey Kacha, an individual

Dated: 6-8, 2015

Lawrence E. Geraci, aka Larry Geraci, an individual

1 Dated: 6/11/15, 2015

2 By Joseph S. Carmellino

3 Joseph S. Carmellino
4 Attorney for Defendants Jeffrey Kacha and
5 JL India Street LP, formerly known as JL
6 India Street, LLC

7 **JUDGMENT**

8 Upon the stipulation of the parties hereto and upon their agreement to entry of this
9 Stipulation without trial or adjudication of any issue of fact or law herein, and good cause
10 appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

11 Dated: 6-12-16

12 JOHN S. MEYER

13 JUDGE OF THE SUPERIOR COURT
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EXHIBIT D



The City of San Diego

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title

Federal Blvd. MMCC

Project No. For City Use Only

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Court's Ex. **030**

Case # 37-2017-00010073-CU-BC-CTL

Rec'd _____

Dept. **C-73** Clk. _____

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:

Signature :

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:

Signature :

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

EXHIBIT E

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings

JULY 8, 2019

Reported By:
Margaret A. Smith,
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057774

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DIRECT EXAMINATION OF GINA M. AUSTIN
BY MICHAEL R. WEINSTEIN
(RT 11:28-13:23)

1 week, which is Thursday at noon -- we may be approaching
2 the beginning of the defendant's case in chief.

3 In any event, plaintiff's case in chief,
4 Counsel, your next witness will be?

5 MR. WEINSTEIN: Gina Austin.

6 THE COURT: She's out in the hallway?

7 MR. WEINSTEIN: I believe so.

8 THE COURT: Madam Deputy, could you retrieve
9 Ms. Austin, please.

10 Good morning, Ms. Austin. If you could follow
11 the directions of my deputy and my clerk, please.

12

13 Gina Austin,
14 being called on behalf of the Plaintiff/Cross-Defendant,
15 having been first duly sworn, testified as follows:

16

17 THE CLERK: Please state your full name and
18 spell your first and last name for the record.

19 THE WITNESS: Gina Austin, G-i-n-a A-u-s-t-i-n.

20 THE COURT: All right. Whenever you're ready,
21 Counsel.

22 MR. WEINSTEIN: Thank you, your Honor.

23 (Direct examination of Gina Austin)

24 BY MR. WEINSTEIN:

25 Q Good morning, Ms. Austin.

26 A Good morning.

27 Q We will be showing you some documents on the
28 screen, but there are books in front of you with tabs if

1 you look at them more closely where you're sitting.

2 What's your profession?

3 A I'm an attorney.

4 Q How long have you been a lawyer?

5 A Thirteen years.

6 Q And are you currently employed?

7 A Yes.

8 Q By whom?

9 A Austin Legal Group.

10 Q And who owns the Austin Legal Group?

11 A I do.

12 Q And are you the sole owner?

13 A Yes.

14 Q Now, currently how many lawyers do you have
15 working for you at the law firm?

16 A Five.

17 Q And how many were there back in 2016, let's
18 say, October of 2016?

19 A Three or four others.

20 Q Okay. So -- and when you said a moment ago
21 five, five including yourself?

22 A Yes.

23 Q All right. And what areas of law does your
24 firm generally practice?

25 A We work corporate mergers and acquisitions,
26 land use entitlements, cannabis entitlement, and
27 litigation.

28 Q And yourself personally, what areas do you

1 focus your practice on?

2 A Currently, almost exclusively in cannabis law.

3 Q And would you explain generally what the area
4 of cannabis law covers.

5 A It covers land use entitlements. So getting a
6 dispensary or a manufacturing facility permitted in a
7 jurisdiction of San Diego. Every city is different. It
8 includes compliance for those companies so that they're
9 compliant with the state law as well as the local
10 jurisdiction law. It has a lot of mergers and
11 acquisitions since there's been a lot of roll-up in the
12 industry in the last year.

13 Q And you practice in jurisdictions outside
14 California?

15 A Yeah. Twenty-five different local
16 jurisdictions in California and then four other states.

17 Q Okay. Now, have you represented persons or
18 businesses in connection with regulatory compliance for
19 getting conditional use permits in the City of
20 San Diego?

21 A Yes.

22 Q On how many occasions?

23 A At least 50.

24 Q And that includes pending applications?

25 A That includes pending ones, correct.

26 Q And how many of your clients within the City of
27 San Diego have obtained a CUP license?

28 A I have to count that.

1 Q Do you have an estimate?

2 A Somewhere between 20 and 25.

3 Q Okay. Now, do you consider yourself one of the
4 experts in the San Diego area as it relates to cannabis
5 law and regulation?

6 A Yes, I do.

7 Q And do you speak regularly at industry
8 conferences on subjects related to cannabis law and
9 regulation?

10 A Yes, I do.

11 Q Can you give me some examples of conferences
12 you've spoken at.

13 A The most recent -- well, most recently, I did a
14 law school panel, a panel for the Thomas Jefferson law
15 school. Before that, I think I was in Chicago speaking
16 at the Arcview conference. And before that, it would
17 have been at the NCIA, National Cannabis Industry
18 Association, conference in Los Angeles.

19 Q And what type of topics have you spoken at
20 those conferences?

21 A Regulatory compliance issues, corporate
22 structuring, funding mechanisms, local -- dealing with
23 local jurisdictions and municipalities.

24 Q And do you know Larry Geraci?

25 A Yes.

26 Q And was Mr. Geraci your client?

27 A Yes.

28 Q Had your firm provided services to him in

DIRECT EXAMINATION OF GINA M. AUSTIN
BY MICHAEL R. WEINSTEIN
(RT 33:10 – 34:01)

1 for everything.

2 Q And who was the applicant on this form?

3 A I believe it's Rebecca Berry. Let me check.

4 Q And was she acting as Mr. Geraci's agent, to
5 your knowledge, in connection with the CUP application?

6 A That's my understanding.

7 Q Was there any -- is there any problem from your
8 perspective and given your experience with having an
9 agent be the applicant on a CUP?

10 A No. Because a conditional on it, obviously
11 makes a difference, I think, of why I said that. The
12 conditional use permit runs with the land.

13 Q Explain to the jury what that means.

14 A What that means is it doesn't matter who the
15 applicant is. Ultimately, it's tied to the dirt. So if
16 the dirt has an entitlement to build a marijuana
17 dispensary, then it stays there, regardless of whether
18 or not I decide to do it, you decide to do it, someone
19 else decides to run it. It's kind of like owning a
20 home, and if I lease it out to somebody else, it's
21 still -- I still own it.

22 Q Okay. Would you look at the next form, which
23 is an Affidavit for Medical Marijuana Consumer
24 Cooperative Form DS-190.

25 Do you see that?

26 A Yes.

27 Q And what's the purpose of that form?

28 A Let me just make sure. This one is the City

1 wants the applicant to make the representation that they
2 know that there is no sensitive use or residential use
3 within 1,000 feet or 100 feet, depending on which, from
4 the property.

5 Q And in this case, there was one within 100 feet
6 or less, and there was an offer of dedication. Is that
7 your --

8 A That's correct.

9 Q And you see that Rebecca -- it looks like
10 Rebecca signed it at the bottom --

11 A That's correct.

12 Q -- as the business owner?

13 Any problem, from your perspective, in your
14 experience, with her signing as a CUP applicant, this
15 form?

16 A No. The City is only interested in that
17 somebody made that representation. So there are only
18 two boxes, owner and agent. And so we just pick one
19 kind of intermittently -- or indiscriminately, owner of
20 the business, agent of the business, because the City is
21 not using this for anything other than the verification
22 of the 1,000 feet and 100 feet.

23 Q And they're going to get plans as well that
24 will verify that?

25 A That's correct.

26 Q All right. Let's look at the third form.

27 A Yes.

28 Q Okay. That's called a Deposit Account

1 Financially Responsible Party Form, DS-3242. And we see
2 Rebecca Berry has signed that form?

3 A That's correct.

4 Q What's the purpose of that form?

5 A This form is who's going to be paying, because
6 you don't have to own the property to make a
7 application. You just have to have authorization to do
8 that. But somebody has to be responsible for paying,
9 and the City wants to know who that is.

10 Q From your perspective, any problem with
11 Mr. Geraci being the financially responsible party
12 signing these forms?

13 A No.

14 Q Go to the next form, please.

15 This is the ownership disclosure statement.

16 A Yes.

17 Q Do you see that?

18 A Yes.

19 Q Have you seen -- first of all, tell the jury
20 what is the purpose of this form?

21 A The purpose of this form, from the City's
22 perspective, is to determine -- so that council members
23 and planning commission members can have -- determine
24 whether or not they have a conflict when they're voting
25 on a matter. So because these are forms -- or these are
26 projects that will go before a hearing body, the
27 ownership is relevant because a council member can't
28 vote on a project if they are involved in it. And the

1 same with planning commissioners.

2 Q Do you see in the middle -- can you pull it up
3 for me, please.

4 Above Rebecca Berry's signature, there are
5 three boxes. One says owner. One says tenant/lessee.
6 And one says redevelopment agent.

7 Do you see that on the form?

8 A Yes.

9 Q And I apologize, your Honor, for not blowing it
10 up on the screen.

11 Are there any other boxes on the form above
12 Rebecca Berry's name?

13 A No.

14 Q It's a preprinted form?

15 A It is a preprinted form.

16 Q And the box checked says tenant/lessee.

17 Do you see that?

18 A Yes.

19 Q And you're aware that Rebecca Berry was not a
20 tenant on the property?

21 A That's correct.

22 Q Is there a problem from your perspective with
23 that box being checked on this form?

24 A No.

25 Q Why not?

26 A Again, the City's forms are limited. They have
27 two boxes, sometimes only three boxes. Also, the
28 redevelopment agency also doesn't make a whole lot of

1 sense for any applicant that would be applying or using
2 this form. And so the City's main concern -- this has
3 come out in the planning commission over the last
4 several months and council as well -- their main concern
5 is to know whether or not the person who is involved in
6 the project that's before them is somebody that they
7 have a business relationship with and have taken more
8 than \$500 from in the last year.

9 Q Okay. And this form represents -- or
10 identifies Rebecca Berry as that person?

11 A That's correct.

12 Q And also identifies Cherlyn Cac, as you see on
13 the left-hand side of the form?

14 A That's correct.

15 MR. WEINSTEIN: Your Honor, I'd offer
16 Exhibit 45.

17 MR. AUSTIN: No objection.

18 THE COURT: Any objection?

19 MR. AUSTIN: No objection.

20 THE COURT: Exhibit 45 will be admitted.

21 (Premarked Joint Exhibit 45, Email to Jim
22 Bartell from Abhay Schweitzer re Federal Blvd.
23 MMCC - Completeness Review, dated 11/14/16, was
24 admitted into evidence.)

25 MR. TOOTHACRE: I think it already was.

26 MR. WEINSTEIN: She's going to reboot.

27 THE WITNESS: Okay.

28

CROSS-EXAMINATION OF GINA M. AUSTIN
BY JACOB P. AUSTIN
(RT 41:10-26)

1 Do you see that?

2 A Yes.

3 Q Is that just confirmation of what you told us
4 earlier, that the application was sitting there and
5 wouldn't be processed through the completeness phase
6 because of the zoning issues?

7 A Can you rephrase the question.

8 Q Sure.

9 When did you receive this email?

10 A It looks like I received it on November 30th.

11 Q All right. And was that consistent with your
12 recollection that this -- the application was being
13 processed through the completeness phase because of the
14 zoning issue that existed?

15 A Right. The City was -- was conflicted as to
16 what to do.

17 We met with the City trying to get them to --
18 knowing that it was going to be corrected in the 11th
19 code update or hoping that it would be, to not deny this
20 outright and continue to process it. And it just sat
21 there as they were trying to figure out what to do with
22 it.

23 Q Until the zoning issue was resolved in late
24 February?

25 A That's correct.

26 Q All right. Now, this case involves a signed
27 document between Mr. Geraci and Mr. Cotton related to
28 the purchase and sale of Mr. Cotton's property.

1 Do you understand that?

2 A Yes.

3 Q Were you involved in the negotiation of an
4 agreement that was signed on November 2nd, 2016? In
5 fact, why don't I have you look at Exhibit 38. That's
6 already been admitted. That will refresh your memory.

7 A What number did you say?

8 Q Thirty-eight.

9 A No, I was not involved in that.

10 Q Okay. And at some point in time after the --
11 the zoning ordinance was introduced to the City Council,
12 were you contacted by Mr. Geraci in connection with
13 doing any drafting of the new agreement?

14 A Yes, I was.

15 Q What happened?

16 A So I'm not confident on the date. I want to
17 say it was around probably March, but I could be off by
18 a couple months here or there of 2017.

19 Mr. Geraci called and said something to the
20 effect of -- I don't want to give exact words. But it
21 was something to the effect of I am tired of being
22 extorted by Darryl Cotton. He wants more money and
23 more -- more interest than what we agreed to. So I'm
24 going to -- I want to draft a new agreement. And can
25 you do that for me? And I said sure. We'll put
26 something together for you.

27 Q And did you get involved, then, in the attempt
28 to draft a new agreement to replace the original

1 agreement?

2 A Our office did.

3 Q And it was an attorney in your office?

4 A That's correct.

5 Q Okay. And were you the person that
6 communicated with that attorney and that was the liaison
7 with the client?

8 A That's correct.

9 Q All right. Did Mr. Cotton -- Geraci tell you
10 what terms he wanted in that new agreement?

11 A He did. But I do not recall what they were.

12 Q Okay. What did you do when you heard those
13 terms from him?

14 A I gave them to an attorney in the office,
15 Arden Anderson, and said this is what we need done. We
16 need a new agreement. Please draft.

17 Q Okay. Would you put up Exhibit 59, previously
18 been admitted.

19 So let me know when you have gotten to
20 Exhibit 59.

21 A I'm here.

22 Q Okay. So Exhibit 59, that's a cover email.
23 But I would like to look at the attachment behind the
24 email.

25 A Yes.

26 Q Okay. On the third page, there's the beginning
27 of an attachment.

28 A Yeah.

CROSS-EXAMINATION OF GINA M. AUSTIN
BY JACOB P. AUSTIN
(RT 54:10-55:11)

1 (Cross-examination of Gina Austin)

2 BY MR. AUSTIN:

3 Q Good morning.

4 A Good morning.

5 Q Mrs. Austin, you mentioned in direct that
6 you're an attorney in the field of cannabis regulation.
7 Correct?

8 A That's correct.

9 Q And you would consider yourself an expert in
10 that field?

11 A That's correct.

12 Q Have you ever testified as a cannabis expert?

13 A No. Let me take that back. Not -- I have
14 been -- I've had trials where I -- where our office is
15 representing a cannabis client and I am there as the
16 expert to provide background information to the Court
17 but not testifying.

18 Q Okay. So -- all right. You haven't been an
19 expert in trials for background --

20 A Not as a designated expert, no.

21 Q Oh. Not expert. All right.

22 How long have you worked in the area of
23 cannabis regulation?

24 A A little over six years.

25 Q As an expert cannabis attorney, do you have
26 clients that seek out your services to assist them in
27 obtaining permits to get licenses to operate medical
28 outlet -- or marijuana outlets?

1 owner and a financially interested party. But we didn't
2 get to that point.

3 Q Okay. So as the main attorney on the CUP
4 application, you were involved in pretty much all
5 important conversations?

6 MR. WEINSTEIN: Object. Vague and ambiguous as
7 phrased.

8 THE COURT: Do you -- do you understand the
9 question, Ms. Austin?

10 THE WITNESS: I think he's asking me if I was
11 involved in every conversation.

12 THE COURT: All right. The objection is
13 overruled.

14 Please answer.

15 THE WITNESS: I wasn't involved in every
16 conversation.

17 BY MR. AUSTIN:

18 Q Just the most important ones that would have an
19 effect on the outcome?

20 A I would hope so.

21 Q All right. And you're familiar with Abhay
22 Schweitzer?

23 A Abhay Schweitzer, yes.

24 Q Did you ever have an email conversation with
25 Mr. Schweitzer asking that Mr. Geraci's name not be
26 included in any of the applications?

27 A Maybe. I worked with Abhay on dozens of
28 projects. And this is several years ago. But maybe.

1 Q And Exhibit 36, which I believe has already
2 been admitted into evidence --

3 THE COURT: Thirty-six has not yet been
4 admitted.

5 MR. AUSTIN: Oh.

6 THE COURT: Are you offering it?

7 MR. AUSTIN: Yes, if we could, your Honor.

8 THE COURT: Any objection to the admission of
9 Exhibit 36?

10 MR. WEINSTEIN: No, your Honor.

11 THE COURT: Exhibit 36 will be admitted.

12 (Premarked Joint Exhibit 36, Email to Rebecca
13 Berry from Abhay Schweitzer Re: Federal Blvd -
14 Site Plan and Floor Plan, dated 10/31/16, was
15 admitted into evidence.)

16 THE WITNESS: Okay.

17 BY MR. AUSTIN:

18 Q Okay. On the first page, towards the bottom,
19 the email dated October 28th, do you recognize this?

20 A Yeah.

21 Q So it purports to be an email you sent to
22 Mr. Schweitzer.

23 A Yes.

24 Q So Item 1, as you have them numbered, can you
25 read that.

26 A "I would like to" -- I think I meant file or
27 fill. I don't know. It's misspelled -- "in the tenant
28 and not the owner on Item No. 3. Cotton has legal

1 issues with the City, and I don't want to see his name
2 on the application unless necessary."

3 Q And what legal issues were those?

4 A My understanding is that he had multiple
5 enforcement actions for illegal cultivation on site.

6 Q Was it multiple, or just one? Do you recall?

7 A I was told multiple.

8 Q Okay. Is that a similar reason why
9 Mr. Geraci's name was kept off that form?

10 A No. Like I said, I didn't know anything about
11 that.

12 Q Okay. Are you familiar with the California
13 Business and Professions Code 26057?

14 A Probably. It sounds like it's part of the
15 cannabis regulations.

16 Q Yes. I don't -- I don't know if you would like
17 to read the first paragraph of this to refresh your
18 recollection or if I can read this section in.

19 THE COURT: What's the exhibit number, Counsel?

20 MR. AUSTIN: What would be the exhibit number
21 on this?

22 THE COURT: Has that been marked previously as
23 an exhibit?

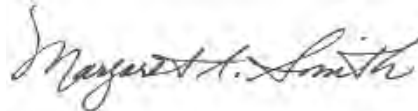
24 MR. AUSTIN: It has not. Could we get judicial
25 notice of the California business code and
26 professions -- or Business and Professions Code.

27 THE COURT: Well, have you shown opposing
28 counsel that document? Why don't you do so.

1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 236, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 8, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 22nd day of July 2019.

13 
14

15 Margaret A. Smith, CSR No. 9733, RPR, CRR
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EXHIBIT F

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1 MR. TOOTHACRE: She.

2 THE COURT: I'm sorry. Is she right outside?

3 MR. TOOTHACRE: I believe so.

4 THE COURT: Madam Deputy, may I ask you to get
5 the next witness.

6 THE BAILIFF: Your Honor, this witness is being
7 accompanied by her attorney.

8 THE COURT: Thank you very much. Counsel, you
9 can make yourself comfortable in the audience section.

10 Ma'am, if you could follow the directions of my
11 clerk, please.

12

13 **Firouzeh Tirandazi,**

14 **being called on behalf of the plaintiff/cross-defendant,**

15 **having been first duly sworn, testified as follows:**

16

17 THE CLERK: Please state your full name and
18 spell your first and last name for the record.

19 THE WITNESS: My name is Firouzeh Tirandazi.

20 F-i-r-o-u-z-e-h. Last name Tirandazi,

21 T-i-r-a-n-d-a-z-i.

22 THE COURT: All right. Counsel, whenever
23 you're ready.

24 MR. TOOTHACRE: Thank you, your Honor.

25 (Direct examination of Firouzeh Tirandazi)

26 BY MR. TOOTHACRE:

27 **Q Good morning, Ms. Tirandazi.**

28 **A Good morning.**

1 received.

2 Q On Mr. Geraci's project?

3 A On Mr. Geraci's project, correct.

4 Q So the total Mr. Geraci paid TECHNE for all
5 their efforts in this project is \$86,631.75?

6 A I believe that's correct.

7 Q Do you believe that without Mr. Geraci's (sic)
8 interference, you would have beat 6222 to the finish
9 line?

10 A I think you mean Mr. Cotton.

11 Q I'm sorry. I knew I was going to do it once.
12 I do mean Mr. Cotton.

13 A I think our chances would have been
14 significantly better, and I think it would be very
15 likely that we would have got that approved first.

16 MR. TOOTHACRE: Thank you, Mr. Schweitzer.
17 Nothing further, your Honor.

18 THE COURT: Cross-examination.

19 MR. AUSTIN: Yes, your Honor.

20 MR. WEINSTEIN: Your Honor, before we proceed
21 to cross-examination, could I just have the bailiff --
22 the next witness is probably in the hall and probably
23 needs to be updated.

24 THE COURT: You can go out there and talk to
25 him or her. Thank you very much.

26 Cross-examination.

27 \ \ \

28 \ \ \

CROSS-EXAMINATION OF FIROUZEH TIRANDAZI
BY JACOB P. AUSTIN
(RT 113:18 – 114:03)

1 sounds -- it sounds like everyone needs to be listed,
2 when you say even an LLC will include attachments with
3 all names of all people.

4 A I guess I don't understand what you mean by
5 "everyone." This is information that is provided to the
6 City by the applicant. So by submitting this and
7 signing it, they're letting the City know that these are
8 the people of -- the property owner and the permittee.

9 Q Thank you.

10 So I assume you're very familiar with San Diego
11 Municipal Code and ordinances. Correct?

12 A To some extent, I'm familiar.

13 Q To some extent.

14 Well, as they relate to marijuana law and
15 processing of CUPs specifically.

16 A I do. But I still do refer to the Municipal
17 Code.

18 Q Yes. I mean, they are very lengthy. So that
19 only makes sense.

20 Are you familiar with a change to the City --
21 the San Diego City Ordinance 20990 -- or 200797? It was
22 passed in -- it was amended and passed in February 22nd,
23 2017.

24 A Is that the -- what -- do you have a title for
25 that ordinance? Is the one that established the
26 marijuana outlet use?

27 Q That's precisely what it is.

28 A Okay.

1 Q Yes. That's where the ordinance changed
2 from -- changed CUP applications for marijuana consumer
3 cooperatives to the broader term of marijuana outlets.
4 Are you familiar with that?

5 A Yes.

6 Q So within that ordinance, it does specifically
7 say that any dispensary or retail licensing requirements
8 are going to be pursuant to the California Business and
9 Professions Code. Correct?

10 A The state requirements.

11 Q Yes. So, basically, all the ordinances will
12 be -- they'll refer to the California Business and
13 Professions Code when it comes to licensing. Correct?

14 A I don't handle the state licensing
15 requirements. So --

16 Q But it does refer you to the Business and
17 Professions Code of California. Correct?

18 A If that's what it says in the ordinance, then
19 yes.

20 Q Is it your understanding that Mr. Geraci, who
21 is sitting before you, was in fact attempting to acquire
22 this CUP on 6176 for himself?

23 MR. TOOTHACRE: Calls for speculation, your
24 Honor.

25 THE COURT: Overruled.

26 THE WITNESS: I don't -- I don't have an answer
27 for that question.

28

1 BY MR. AUSTIN:

2 Q Is that because his name does not appear
3 anywhere in any of the applications for the 6176
4 property?

5 A That -- that is correct.

6 Q Did you ever have any email communications
7 directly with Mr. Geraci?

8 A I don't recall.

9 Q Do you recall any phone conversations with
10 Mr. Geraci or sit-down meetings?

11 A I don't -- I don't recall phone conversations
12 or sit-down meetings.

13 Q Looking at Mr. Geraci now, do you -- do you
14 believe you've ever met this man?

15 A I don't believe so.

16 Q If he were attempting to acquire a CUP using
17 his secretary as a proxy without ever disclosing his
18 name, does that seem like it would be a violation of
19 San Diego law and California state law?

20 MR. TOOTHACRE: Argumentative, your Honor.

21 THE COURT: Sustained.

22 BY MR. AUSTIN:

23 Q Essentially, anyone with an ownership or
24 financial interest in a marijuana outlet is supposed to
25 be disclosed to the City. Correct?

26 A You know, looking at the ownership disclosure
27 statement, it's the property owner and then also a
28 tenant/lessee would have to be identified.

1 Q Right. And that is like an introductory
2 application form.

3 But are you familiar with the California
4 Business and Professions Code?

5 A No.

6 Q Okay. Do you know of any situation where
7 someone with previous sanctions against them for illegal
8 cannabis principals would be barred from acquiring a
9 marijuana outlet CUP?

10 MR. TOOTHACRE: Vague and ambiguous and assumes
11 facts, your Honor.

12 THE COURT: Overruled.

13 BY MR. AUSTIN:

14 Q That means you can -- you can answer.

15 A Could you -- I'm sorry. Could you repeat the
16 question?

17 Q Yeah. Absolutely.

18 Is it your understanding that if someone had
19 been sanctioned for illegal cannabis dispensary
20 activity, is it your understanding that they would be
21 barred from acquiring a CUP in San Diego?

22 A I'd have to refer to the Municipal Code. I
23 believe there may be a section in there once you have a
24 conditional use permit, you'd have to go through a
25 background check process.

26 Q Okay. Do you know what that background check
27 process entails?

28 A It's a LiveScan and also specific forms that

1 need to be completed, specific City of San Diego police
2 forms that need to be completed. And it's processed by
3 the San Diego Police Department.

4 Q How many CUPs are allowed in the City of
5 San Diego?

6 A CUPs for --

7 Q Marijuana outlets.

8 A Four per council district.

9 Q And how many council districts are there?

10 A There's nine. So 36 total.

11 Q So 36 total.

12 Would it be fair to say that these are
13 competitively sought after?

14 A Due to the limit, yes.

15 Q Yes. Do you know how many CUPs have been
16 granted for marijuana outlets in San Diego?

17 A Total count, not off the top of my head. I
18 couldn't say.

19 Q Approximately would you say 20, 25, maybe 30?

20 A Maybe 20.

21 Q Maybe 20. So perhaps 16 are still available?

22 A Yeah. Again, I -- I have that data. Just that
23 data isn't with me.

24 Q No problem.

25 Are you aware of how many CUPs are being
26 processed right now for marijuana outlets in the DS --
27 in your -- your department?

28 A Maybe about two or three.

1 Q Two or three.

2 So the reason that there's 10 available slots
3 that are not being processed currently, is that because
4 the restrictions are so difficult to overcome?

5 A I can't answer that. I don't know.

6 Q In regards to the 1,000-foot radius, the
7 proximity to schools, churches, daycare centers, et
8 cetera, does that exclude most properties from being
9 eligible for a CUP?

10 A Again, I can't answer that, but those
11 restrictions do exist.

12 Q Well, in your -- in your experience, has that
13 created a lot of difficulty in people acquiring the
14 CUPs?

15 A Most of the applications that are submitted,
16 they are in compliance with the separation requirements.
17 There may have been a few, less than a handful, that
18 have been denied because the separation requirements
19 have not been met.

20 Q Is it your understanding that marijuana outlets
21 are very profitable?

22 A I -- I can't answer that. I don't --

23 Q That's fine.

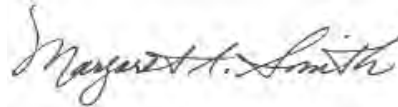
24 So in some of the emails that we saw, Darryl --
25 or, I mean -- I apologize -- Mr. Cotton, he was
26 inquiring about having a CUP in his name on the 6176
27 property. Correct?

28 A I believe he was requesting to be able to

1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 166, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 9, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 24th day of July 2019.

13 
14

15 Margaret A. Smith, CSR No. 9733, RPR, CRR
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EXHIBIT G

To: Becky Berry[Becky@tfcisd.net]
Cc: Larry Geraci[Larry@tfcisd.net]; Jim Bartell[jim@bartellassociates.com]; Austin, Gina[gaustin@austinlegalgroup.com]
From: Abhay Schweitzer
Sent: Mon 10/31/2016 4:18:12 PM
Importance: Normal
Subject: Re: Federal Blvd - Site Plan and Floor Plan
Received: Mon 10/31/2016 4:18:19 PM

Court's Ex. **036**
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. **C-73** Clk. _____

Good afternoon Becky,

We successfully submitted the Federal Blvd project for the first step in the Conditional Use Permit process which is called completeness review.

The City of San Diego PTS number is: 520606

During this process the City staff is reviewing the submitted information in order to determine if it is complete enough for the full submittal. Typically this process takes approximately 2 weeks.

We will have the chance to make adjustments to the plans during this period, but it has to remain substantially as submitted. Interior changes are acceptable.

The City changed their total fee amount from \$8,800 to \$8,555 but they accepted your check anyways and just added extra credit to the deposit account. You can see the invoice at the following link: <http://opendsd.sandiego.gov/web/Invoices/Details/734406>

I'll get the actual paper copy of the paid invoice by tomorrow morning showing the full \$8,800 and will email that to you.

Please let me know if you have any questions.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techno-us.com sustainablearchitect.org
o 619-940-5814 m 313-595-5814

On Fri, Oct 28, 2016 at 12:50 PM, Austin, Gina <gaustin@austinlegalgroup.com> wrote:

All,

Here are my comments:

DS3032

1. I would like to file in the tenant and not the owner on Item #3. Cotton has legal issues with the City and I don't want to see his name on application unless necessary.
2. The bottom of the form should be signed by Rebecca unless you have given Abhay written authorization to file. Genereally better to have signed by applicant if possible.

Still need DS-190, DS-318, DS-3242, copy of the grant deed, copy of the lease, and the 100' and 1000' maps.

Are we waiting on the completeness check before we submit the noticing package?

Gina

From: Abhay Schweitzer [mailto:abhay@techne-us.com]
Sent: Thursday, October 27, 2016 5:31 PM
To: Austin, Gina
Cc: Larry Geraci; Becky Berry; Jim Bartell
Subject: Re: Federal Blvd - Site Plan and Floor Plan

Good afternoon Gina,

Attached you will find the drawings we have completed so far. We are still working on 4 sheets which we will complete tomorrow morning. They are related to accessibility, security and stormwater management. I expect we will have them complete by 10:00am tomorrow.

The package with the separation maps, adjacent uses and so forth is ready and I'll likely have it in my hands tomorrow morning some time.

I'm attaching the forms we have partially completed so far for you to review as well in case you need to see them.

Please let me know if you need anything else meanwhile.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

On Thu, Oct 27, 2016 at 12:41 PM, Abhay Schweitzer <abhay@techne-us.com> wrote:

Hi Gina,

Yes thats me. I'm working to complete everything today and I'll email today once its done.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

On Thu, Oct 27, 2016 at 11:29 AM, Austin, Gina <gaustin@austinlegallgroup.com> wrote:

Thanks Abhay. Are you the person completing the submission package? I am under the impression it is getting submitted on Friday. I would like to review all the docs prior to submittal. PDF is fine.

Gina

From: Abhay Schweitzer [mailto:abhay@techne-us.com]
Sent: Wednesday, October 26, 2016 4:57 PM
To: Larry Geraci; Becky Berry
Cc: Austin, Gina; Jim Bartell
Subject: Federal Blvd - Site Plan and Floor Plan

Good afternoon,

Attached you will find the proposed site plan and floor plan. I added the language that Gina mentioned for the irrevocable offer of dedication. I also made a separate sheet showing the separation after this dedication, which can in around 100'-1" just so that we can a bit of a buffer.

We are on track to submit on Friday for the first step which is the Submitted Completeness Review.

We don't have time to make any changes to the floor plan or site at this stage, but we can make changes after we submit to the City.

With the proposed plan, you would be able to easily accommodate 12-15 clients at one time.

You will notice a storage room at the top left corner of the floor plan. There is a corridor which leads to this room. The room is large enough so that we can add circulation elements for a future second floor addition.

Thank you

ABHAY SCHWEITZER
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

EXHIBIT H



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Court's Ex. **034**

Case # 37-2017-00010073-CU-BC-CTL

Rec'd _____

Dept. **C-73** Clk _____

General Application

FORM
DS-3032
AUGUST 2013

Must be completed for all permits/approvals

1. Approval Type: *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☒ Other: CUP

2. Project Address/Location: *Include Building or Suite No.*
6176 Federal Blvd.

Project Title:
Federal Blvd. MMCC

Project No.: *For City Use Only*
520606

Legal Description: *(Lot, Block, Subdivision Name & Map Number)*

TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO

Assessor's Parcel Number:
543-020-02

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☒ Commercial/Non-Residential ☐ Vacant Land

Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☒ Commercial/Non-Residential ☐ Vacant Land

Project Description:

The project consists of the construction of a new MMCC facility

3. Property Owner/Lessee Tenant Name: *Check one* ☐ Owner ☒ Lessee or Tenant
Rebecca Berry

Telephone: _____ Fax: _____

Address: _____ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcscd.net

4. Permit Holder Name - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMG Section 113.0103.

Name: Rebecca Berry **Telephone:** _____ **Fax:** _____

Address: _____ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcscd.net

5. Licensed Design Professional (if required): (check one) ☒ Architect ☐ Engineer **License No.:** C-19371

Name: Michael R. Morton AIA **Telephone:** _____ **Fax:** _____

Address: _____ **City:** San Diego **State:** CA **Zip Code:** 92104 **E-mail Address:** _____

6. Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -

a. Year constructed for all structures on project site: 1951

b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A

c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☒ Yes ☐ No

d. Does the project include any foundation repair, digging, trenching or other site work? ☒ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer

Signature: **Date:** 10/28/2016

7. Notice of Violation - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. Applicant Name: *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☒ Other Person per M.C. Section 112.0102
Rebecca Berry

Address: _____ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcscd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: **Date:** Oct 31 2016

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
Upon request, this information is available in alternative formats for persons with disabilities.

DS-3032 (08-13)



City of San Diego
Development Services
1222 First Ave., MS-401
San Diego, CA 92101
(619) 446-5000

Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)

FORM
DS-190
MARCH 2014

The purpose of this affidavit is for the property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative (MMCC) to affirm that all uses within 1,000 feet from the subject property line have been identified, including residential zones within 100 feet, as defined in San Diego Municipal Code (SDMC), Sections 113.0103 and 141.0614.

The proposed MMCC location must be 100 feet from any residential zone and not within 1,000 feet of the property line of the following:

1. Public park
2. Church
3. Child care center
4. Playground
5. City library
6. Minor-oriented facility
7. Other medical marijuana consumer cooperatives
8. Residential care facility
9. Schools

GENERAL INFORMATION

Project Name:

Federal Blvd. MMCC

Project No.: For City Use Only

5201004

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Date Information Verified by Owner or Authorized Agent:

10/28/2016

DECLARATION: *The property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative must complete the following section and sign their name where indicated.*

We are aware that the business described above is subject to the Medical Marijuana Consumer Cooperatives (MMCC) regulated by SDMC, Section 141.0614 and Chapter 4, Article 2, Division 15. We hereby affirm under penalty of perjury that the proposed business location is not within 1,000 feet, measured in accordance with SDMC, Section 113.0225, of the property line of any public park, church, child care center, playground, library owned and operated by the City of San Diego, minor-oriented facility, other medical marijuana consumer cooperative, residential care facility, or schools; and is 100 feet from any residential zone as identified on the 1000-foot radius map and spread-sheet submitted with the Conditional Use Permit application.

Property Owner or Authorized Agent Name: Check one ☒ Owner ☐ Agent

Telephone No.:

Mailing Address:

City:

State:

Zip Code:

Signature:

Date:

Business Owner Name:

Rebecca Berry

Telephone No.:

(858) 999-6882

Mailing Address:

5982 Gullstrand Street

City:

San Diego

State:

CA

Zip Code:

92122

Signature:

Rebecca Berry

Date:

Oct 31 2016

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
Upon request, this information is available in alternative formats for persons with disabilities.

DS-190 (03-14)



City of San Diego
Development Services
Attn: Deposit Accounts
1222 First Ave., MS-401
San Diego, CA 92101
(619) 446-5000

Deposit Account/Financially Responsible Party

FORM
DS-3242
AUGUST 2014

Project Address/Location: 6176 Federal Blvd. San Diego, CA. 92114
Project No.: 520606 Internal Order No.: For City Use Only

Approval Type: Check appropriate box for type of approval requested:

- ☐ Grading ☐ Public Right-of-Way ☐ Subdivision ☐ Neighborhood Use ☐ Coastal ☐ Neighborhood Development
☐ Site Development ☐ Planned Development ☒ Conditional Use ☐ Variance ☐ Vesting Tentative Map
☐ Tentative Map ☐ Map Waiver ☐ Other: _____

Is the project subject to a Reimbursement Agreement? ☐ No ☐ Yes

If yes, provide Reimbursement Agreement Application Project Number or Resolution/Ordinance No.: _____

Deposit Trust Fund Account Information: A deposit into a Trust Fund account with an initial deposit to pay for the review, inspection and/or project management services is required. The initial deposit is drawn against to pay for these services. The Financially Responsible Party will receive a monthly statement reflecting the charges made against the account, and an invoice when additional deposits are necessary to maintain a minimum balance. The payment of the invoice will be required in order to continue processing your project. At the end of the project, any remaining funds will be returned to the Financially Responsible Party.

FINANCIALLY RESPONSIBLE PARTY

Name/Firm Name:

Address:

E-mail:

Rebecca Berry

5982 Gullstrand Street

City:

State:

Zip Code:

Telephone:

Fax No.:

San Diego

CA

92122

Financially Responsible Party Declaration: I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.

☐ This is a continuation of existing Project No.: _____ Internal Order No.: _____

NOTE: Using an existing opened account may be allowed when:

1. Same location for both projects;
2. Same Financially Responsible Party;
3. Same decision process (Ministerial and discretionary projects may not be combined);
4. Same project manager is managing both projects; and
5. Preliminary Review results in a project application.

Please be advised: Billing statements cannot distinguish charges between two different projects.

Please Print Legibly.

Print Name:

REBECCA BERRY

Title:

PRESIDENT

Signature*:

Rebecca Berry

Date:

10/31/16

*The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer).

FOR CITY USE ONLY

Project Title:

Federal Blvd. mmcc

Date Requested:

10/31/16

☐ Keep existing Project No.: _____ as lead or ☐ Use new Project No.: _____ as lead

ACCOUNT CLOSURE AUTHORIZATION

Date Requested:

☐ Completed ☐ Inactive ☐ Withdrawn ☐ Collections

Print Name:

Signature:

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
Upon request, this information is available in alternative formats for persons with disabilities.

DS-3242 (08-14)



THE CITY OF SAN DIEGO

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title**Project No. For City Use Only**

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No**Name of Individual (type or print):**

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency**Street Address:**

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:**Signature:****Date:**

10-31-2016

Name of Individual (type or print):☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency**Street Address:****City/State/Zip:****Phone No:****Fax No:****Signature :****Date:****Name of Individual (type or print):**

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency**Street Address:**

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:**Signature :****Date:**

10-31-2016

Name of Individual (type or print):☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency**Street Address:****City/State/Zip:****Phone No:****Fax No:****Signature :****Date:**

EXHIBIT I

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
Cross-Defendant REBECCA BERRY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1 through 10,
inclusive,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept. C-73

**PLAINTIFF/CROSS-DEFENDANT
LARRY GERACI'S ANSWERS TO
SPECIAL INTERROGATORIES, SET
TWO, PROPOUNDED BY
DEFENDANT/CROSS-COMPLAINANT
DARRYL COTTON**

[IMAGED FILE]

Complaint Filed: March 21, 2017
Trial Date: January 25, 2018

PROPOUNDING PARTY: DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON

RESPONDING PARTY: PLAINTIFF/CROSS-DEFENDANT LARRY GERACI

SET NO: TWO

Plaintiff/Cross-Defendant LARRY GERACI (hereinafter "Responding Party") responds to the
second set of Special Interrogatories propounded by Defendant/Cross-Complainant DARRYL COTTON,
as follows:

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PRELIMINARY STATEMENT

These responses are made solely for the purpose of, and in relation to, this action. Each response is given subject to all appropriate objections (including but not limited to objections concerning competency, relevancy, materiality, propriety and admissibility) which would require the exclusion of any evidence contained herein if the evidence was offered in court. All such objections and grounds therefore are reserved and may be interposed at the time of trial.

The party on whose behalf the responses are given has not yet completed its investigation of the facts relating to this action, has not yet completed its discovery in this action, and has not yet completed its preparation for trial or hearing. Consequently, the following responses are given without prejudice to the answering party's right to produce, at the time of trial or hearing, subsequently discovered evidence relating to the proof of any material facts, and to produce all evidence, whenever discovered, relating to the proof of facts subsequently discovered to be material.

Except for facts explicitly admitted herein, no admissions of any nature whatsoever are to be implied or inferred. The fact that any interrogatory herein has been answered should not be taken as an admission, or a concession of the existence, of any facts set forth or assumed by such interrogatory, or that such answer constitutes evidence of any fact thus set forth or assumed. All responses must be construed as given on the basis of present recollection.

DEFINITIONS

The terms used herein are defined as set follows:

1. The terms "YOU" and "YOUR" shall mean and refer to Plaintiff and Cross-Defendant LARRY GERACI.

2. The term "COTTON" shall mean and refer to Defendant and Cross-Complainant DARRYL COTTON.

3. The term "BERRY" shall mean and refer to Cross-Defendant REBECCA BERRY.

4. The term "PROPERTY" shall mean and refer to the real property located at 6176 Federal Boulevard, City and County of San Diego, California, 92114.

5. The terms "PERSON" or "PERSONS" shall mean and refer to any natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation or public

entity.

6. The term "AGENTS" shall mean and refer to all PERSONS with whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys, accountants, investigators, experts, insurance companies and their agents and employees, and anyone else acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any such AGENTS received compensation for their services from YOU or any other PERSON.

7. The terms "DOCUMENT" and "DOCUMENTS" shall mean and refer to any and all writings as defined by Evidence Code §250 including but not limited to DOCUMENTS which are handwritten, typed, printed, photocopied, sent electronically such as by electronic mail messages, facsimiles, and every other means of recording any tangible thing and forms of communication and/or representation, including letters, words, pictures, sounds or symbols, or combinations thereof, as well as all ELECTRONICALLY STORED INFORMATION as defined below.

8. The term "ELECTRONICALLY STORED INFORMATION" shall mean and refer to all information and all metadata related thereto stored electronically on a computer hard drive, laptop, external hard drive, CD, DVD or other similar device, server, in the cloud, on a cellular or other type of telephone or otherwise, regardless of whether such ELECTRONICALLY STORED INFORMATION also currently exists in non-electronic form, no matter how produced or maintained, in YOUR actual or constructive possession, in custody or control, or of which YOU have knowledge of its existence regardless whether it was prepared, published or released by YOU or by any third party. ELECTRONICALLY STORED INFORMATION also includes all content, profiles and related metadata posted on the platforms/websites of any social media or other providers or any mobile application, including but not limited to social media providers and/or websites such as Facebook, Twitter, Instagram, Snap Chat, Linkedin, Yelp, YouTube, Tumblr and Wordpress.

9. The term "IDENTIFY" as used herein in any Special Interrogatory seeking information concerning a DOCUMENT or DOCUMENTS is a request that YOU provide:

- a. A description of the DOCUMENT(S);
- b. The date(s) of the DOCUMENT(S);

1 c. The identity of each PERSON who authored and/or signed the DOCUMENT(S);

2 d. The subject matter of the DOCUMENT(S);

3 e. The present location of the DOCUMENT(S); and

4 f. The identity of the custodian of the DOCUMENT(S).

5 10. The term "IDENTIFY" as used herein in any Special Interrogatory seeking information
6 concerning any oral statement, conversation, discussion or communication is a request that YOU provide:

7 a. The identity of each PERSON who participated in or witnessed the oral statement,
8 conversation, discussion or communication;

9 b. The date when and place where the oral statement, conversation, discussion or
10 communication occurred;

11 c. The substance of the oral statement, conversation, discussion or communication; and

12 d. The identity of any and all notes, memoranda or any other DOCUMENTS memorializing,
13 referring or RELATING TO the subject matter of the oral statement, conversation, discussion or
14 communication.

15 11. The term "IDENTIFY" as used herein in any Special Interrogatory seeking information
16 concerning any PERSON or PERSONS is a request that YOU provide:

17 a. The full name of each such PERSON;

18 b. The present or last known address residential and business addresses of each such
19 PERSON; and

20 c. The employer, position and title of each such PERSON during the time period specified in
21 YOUR response to the Special Interrogatory.

22 d. If the PERSON is an organization or entity other than a natural person, please provide:

23 (1) The full name and type of the entity or organization;

24 (2) The date of and state in which the entity or organization was formed;

25 (3) The address and telephone number of each principal place of business of the entity or
26 organization;

27 (4) The nature of the business conducted by the entity or organization;

28 (5) A description of YOUR affiliation or other relationship with the entity or organization;

1 (6) The length of YOUR affiliation or other relationship with the entity or organization;

2 (7) The names, addresses and telephone numbers of each PERSON who is an employee, agent,
3 representative or affiliate of the entity or organization with whom YOU have had contact; and

4 (8) A description of the nature of YOUR contact with each such PERSON.

5 12. The term "IDENTIFY" as used herein in any Special Interrogatory seeking information
6 concerning any action YOU took and/or any activity in which YOU engaged is a request that YOU
7 provide:

8 a. The date(s) on which YOU took or engaged in each such action and/or in activity;

9 b. A description of each such action and/or activity;

10 c. The identity of each PERSON who participated in, witnessed and/or has knowledge of
11 each such action and/or activity; and

12 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)
13 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

14 13. The term "RELATING TO" shall mean and refer to a reference regarding, pertaining to,
15 describing, discussing, reflecting, mentioning, evidencing, containing, citing, summarizing, analyzing or
16 bearing any logical or factual relevance to or connection with the subject matter of the Special
17 Interrogatory.

18 14. The term "COMPLAINT" shall mean and refer to the DOCUMENT entitled "Plaintiffs
19 Complaint For: 1. Breach of Contract; Breach of the Covenant of Good Faith and Fair Dealing; 3. Specific
20 Performance; and 4. Declaratory Relief YOU filed in this action on March 21, 2017.

21 15. The term "CITY" shall mean and refer to The City of San Diego, and any and all public
22 officials, employees and/or any other PERSONS or AGENTS representing the CITY in any capacity
23 whatsoever.

24 16. The "NOVEMBER DOCUMENT" shall mean and refer to the DOCUMENT executed by
25 COTTON on November 2, 2016 attached as Exhibit A to YOUR COMPLAINT.

26 17. The term "CONFIRMATION EMAIL" as used herein shall mean and refer to YOUR
27 November 2, 2016 email sent at 9:13 p.m. in response to COTTON's 6:55 p.m. email in which YOU
28 stated, "No no problem at all."

1 18. The term "DISAVOWMENT ALLEGATION" shall mean and refer to YOUR contention
2 that on November 3, 2016 YOU called COTTON and told him YOU never agreed to give him and equity
3 position in the business on the PROPERTY to which COTTON acquiesced that he did not have, was not
4 entitled to, and/or agreed to forego any ownership interest in the business on the PROPERTY by
5 responding to the effect of "well, YOU don't get what YOU don't ask for."

6 19. The term "CUP" shall mean and refer to the Conditional Use Permit for the PROPERTY to
7 be used as a Medical Marijuana Cooperative Collective/Marijuana Outlet ("MO").

8 20. The term "6176 CUP APPLICATION" shall mean and refer to any and all DOCUMENTS
9 submitted to the CITY on October 31, 2018 by YOU or YOUR AGENTS to initiate the application
10 process to obtain CITY approval of the CUP.

11 21. The term "CUP APPROVAL PROCESS" shall mean and refer to any and all activities
12 related in any way to the CITY's processing of the CUP following submission of the 6176 CUP
13 APPLICATION.

14 **RESPONSES TO SPECIAL INTERROGATORIES**

15 **SPECIAL INTERROGATORY NO. 1:**

16 IDENTIFY all PERSONS YOU have retained or PERSONS who have acted on YOUR
17 behalf in connection with YOUR "CUP efforts" as alleged in Paragraph 9 of YOUR
18 COMPLAINT, including but not limited to the architects, engineers, surveyors, construction
19 professionals, attorneys, lobbyists, consultants and any AGENTS of whatsoever nature, regardless
20 of whether or not any such PERSONS were compensated for their services.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

22 Abhay Schweitzer
23 TECHNE Design Development
24 3856 30th Street,
 San Diego, California 92104
 (619) 940-5814

25 Jim Bartell
26 Bartell and Associates
27 53333 Mission Center Road, No. 115
 San Diego, California 92108

28 Gina M. Austin, Esq.
 Austin Legal Group

3990 Old Town Avenue, Suite A-112
San Diego, California 92110
(619) 923-9600

Lundstrom Engineering and Surveying, Inc.
5333 Mission Center Road, No. 115
San Diego, California 92108

SWLA
4429 Morena Boulevard
San Diego, California 92117
(858) 270-8688

Title Pro Information Systems
13520 Scarsdale Way
San Diego, California 92128
(760) 295-3951

Doug Skinner, PG, CEG
Senior Geologist
SCST, Inc.
6280 Riverdale St, San Diego, CA 92120
(619) 280-4321

Other miscellaneous vendors

SPECIAL INTERROGATORY NO. 2:

IDENTIFY all PERSONS of whom YOU are aware who have an established or alleged interest in the CUP or the PROPERTY.

RESPONSE TO SPECIAL INTERROGATORY NO. 2:

Objection: The interrogatory is vague and ambiguous as to what is meant by established or alleged interest in the CUP or the property. Additionally, the interrogatory is impermissibly compound.
[CCP § 2030.060 (c) – (d).]

Subject to and without waiving these objections, Responding Party responds as follows: Larry Geraci; Rebecca Berry, Mr. Geraci's authorized agent for the CUP application; and Darryl Cotton.

SPECIAL INTERROGATORY NO. 3:

For each PERSON IDENTIFIED in YOUR response to Special Interrogatory No. 2, describe with specificity when and how YOU first became aware of his or her alleged interest in the CUP or PROPERTY.

///

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

2 Objection: The interrogatory is vague and ambiguous as to what is meant by established or
3 alleged interest in the CUP or the property. Additionally, the interrogatory is impermissibly compound.
4 [CCP § 2030.060 (c) – (d).] The interrogatory is also objectionable in that it contains impermissible
5 subparts under the definition of IDENTIFY. [CCP § 2030.060(f).]

6 Subject to and without waiving these objections, Responding Party responds as follows: Larry
7 Geraci first became aware that Darryl Cotton had an ownership interest in the property in the months
8 prior to entering into the agreement to purchase the property on November 2, 2016, referred to in the
9 definitions as the NOVEMBER DOCUMENT. Mr. Geraci became aware that he had a contractual
10 interest in the property on November 2, 2016, when Mr. Cotton and I signed the NOVEMBER
11 DOCUMENT. Larry Geraci was aware that he had an interest in the CUP application at the time the CUP
12 application was submitted by Applicant, Rebecca Berry, his authorized agent for the CUP application.

13
14 **SPECIAL INTERROGATORY NO. 4:**

15 In addition to the PROPERTY, do YOU or any entity in which YOU have an interest hold
16 an equitable or financial interest in any other real property subject to a pending application for or
17 an approved Conditional Use Permit for marijuana sales or other marijuana-related activities?

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

19 Objection: The interrogatory is vague and ambiguous as to what is meant by “equitable or
20 financial interest in any other real property...”. Additionally, the interrogatory requests information
21 which is not relevant to the pending matter and which is not likely to lead to the discovery of matters
22 relevant to the instant proceeding. [CCP §§ 2017.010, 2030.010Ia); *Kalabla v. Gray* (2002) 95
23 Cal.App.4th 1416, 1417 (citing text).] Additionally, the interrogatory is impermissibly compound.
24 [CCP § 2030.060 (c) – (d).]

25 Subject to and without waiving these objections, Responding Party responds as follows: No.

26
27 **SPECIAL INTERROGATORY NO. 5:**

28 If YOUR response to Special Interrogatory No. 4 is in the affirmative, please IDENTIFY

each such real property.

RESPONSE TO SPECIAL INTERROGATORY NO. 5:

Not applicable.

SPECIAL INTERROGATORY NO. 6:

If YOUR response to Special Interrogatory No. 4 is in the affirmative, please describe with specificity YOUR ownership interest in each real property identified in YOUR response to Special Interrogatory No. 5.

RESPONSE TO SPECIAL INTERROGATORY NO. 6:

Not applicable.

SPECIAL INTERROGATORY NO. 7:

IDENTIFY each and every term and condition for the sale of the PROPERTY specified in the NOVEMBER DOCUMENT.

RESPONSE TO SPECIAL INTERROGATORY NO. 7:

Objection, the NOVEMBER DOCUMENT speaks for itself. The terms and conditions for the sale of the PROPERTY specified in the NOVEMBER DOCUMENT are as follows:

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd., CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary.)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.

/s/
Larry Geraci

/s/
Darryl Cotton

SPECIAL INTERROGATORY NO. 8:

IDENTIFY each and every obligation YOU are required to perform as specified in the

1 NOVEMBER DOCUMENT.

2 **RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

3 Objection, the NOVEMBER DOCUMENT speaks for itself.

4 Subject to and without waiving this objection, Responding Party responds as follows: The
5 obligations Mr. Geraci is required to perform under the November 2, 2016 agreement are:

6 1) Pay a \$10,000.00 deposit.

7 2) Apply for and seek approval of a CUP for operation of a marijuana dispensary at the
8 property (implicit is the obligation to make good faith efforts);

9 3) If a CUP is approved for the property, pay the \$790,000.00 balance of the purchase price to
10 Darryl Cotton.

11
12 **SPECIAL INTERROGATORY NO. 9:**

13 Please describe with specificity each and every "remaining obligation" YOU are required to
14 perform as specified in the NOVEMBER DOCUMENT.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

16 Objection, the NOVEMBER DOCUMENT speaks for itself.

17 Subject to and without waiving this objection, Responding Party responds as follows: The
18 obligations Mr. Geraci is required to perform under the November 2, 2016 agreement are:

19 1) Continue to seek approval of a CUP for operation of a marijuana dispensary at the property
20 (implicit is the obligation to make good faith efforts);

21 2) If a CUP is approved for the property, pay the \$790,000.00 balance of the purchase price to
22 Darryl Cotton.

23 These obligations are continuing as of the present date.

24
25 **SPECIAL INTERROGATORY NO. 10:**

26 Please describe with specificity each and every condition that still must be fulfilled to
27 obtain the CITY approval of the 6176 CUP APPLICATION.

28 ///

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

2 Objection: The interrogatory is ambiguous as phrased because the term “condition” has a
3 specific meaning in the context of a CUP Application, namely, conditions that may be attached to any
4 approved CUP.

5 Subject to and without waiving this objection, Responding Party responds as follows: The
6 decision maker for City of San Diego Conditional Use Permits such as this one is the Hearing
7 Officer. Prior to being scheduled for a hearing with the Hearing Officer, City of San Diego staff
8 creates a draft version of the Conditional Use permit which incorporates all standard conditions
9 and conditions related to each specific discipline. As of this date, Plaintiff (through Abhay
10 Schweitzer of TECHNE) has not yet received such document from the City of San Diego. The
11 conditions have timing associated with them which range from prior to construction, after
12 construction or some other time. Some conditions must be satisfied continuously through the life
13 of the permit, while some are single events. The City of San Diego is responsible for verifying that
14 the conditions. The proposed conditions would only be satisfied in the event that the Conditional
15 Use Permit is granted, therefore it is not possible to fulfill those conditions and then
16 obtain approval of the Conditional Use Permit.

17
18 **SPECIAL INTERROGATORY NO. 11:**

19 Please describe with specificity each and every issue that still must be resolved to obtain
20 CITY approval of the 6176 CUP APPLICATION.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

22 Responding Party is unaware of each and every issue that still must be fulfilled to obtain the
23 City approval of the CUP application as that changes over time and is at the discretion of the City of
24 San Diego. Nevertheless, as of this date, the City of San Diego Development Services Department
25 is actively reviewing the latest submittal for this Conditional Use Permit, which was done on
26 October 31, 2018. The reviews are scheduled to be completed on or about November 30, 2018,
27 according to the Development Services own schedules for these reviews. The latest submittal,
28 mentioned above, was done in order to address the Cycle Issues which

1 were received from the Development Services Department as a result of their review of the
2 previous submittal. Those Cycle Issues, which are set forth in the attached letter dated September
3 26, 2018, from the City of San Diego Development Services Department to Abhay Schweitzer of
4 TECHNE, describe in detail every issue that must be resolved in order for the reviewing staff
5 to recommend approval of the project to the Hearing Officer. Staff does not approve or deny a
6 project such as this one (Process Three Conditional Use Permit).

7
8 **SPECIAL INTERROGATORY NO. 12:**

9 Please state with specificity all reasons why YOU, as the potential purchaser of the
10 PROPERTY, did not submit the 6176 CUP APPLICATION in YOUR own name.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

12 For two main reasons. First, I held a federal license and at the time of submittal of the CUP
13 Application and the difference between federal and state/local enforcement of laws related to marijuana
14 gave rise to uncertainty regarding the potential for adverse impact on my federal license. Second, for
15 convenience of administration during the anticipated application process, I elected to have my assistant
16 act as my agent in submitting the CUP Application.

17
18 **SPECIAL INTERROGATORY NO. 13:**

19 IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION submitted
20 to the CITY which IDENTIFY YOU as a party having an interest in the PROPERTY.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

22 Objection: This interrogatory is unduly burdensome as Responding Party, through his
23 consultant, Abhay Schweitzer of TECHNE, has made multiple submissions in connection with the
24 process of applying for and seeking approval of the 6176 CUP Application, nearly all of which were
25 not reviewed by Responding Party. Notwithstanding and without waiving this objection, Responding
26 Party will produce all documents provided to the City in connection with its successive resubmissions
27 that have not been produced previously.

1 **SPECIAL INTERROGATORY NO. 14:**

2 IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION reviewed
3 by Gina Austin.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

5 Objection: This interrogatory invades the attorney-client privilege. [Cal. Evid. Code § 954.]
6 Based on the foregoing objection, Responding Party will not reply to this interrogatory.

7
8 **SPECIAL INTERROGATORY NO. 15:**

9 IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION drafted or
10 revised by Gina Austin.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 15:**

12 Objection: This interrogatory invades the attorney-client privilege. [Cal. Evid. Code § 954.]
13 Based on the foregoing objection, Responding Party will not reply to this interrogatory.

14
15 **SPECIAL INTERROGATORY NO. 16:**

16 IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION reviewed
17 by Jim Bartell.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

19 Objection: Plaintiff does not have personal knowledge of all documents related to the CUP
20 application reviewed by Jim Bartell over the course of the last 2 years. Mr. Bartell has that information
21 and his deposition can be taken.

22
23 **SPECIAL INTERROGATORY NO. 17:**

24 Please state with specificity all reasons why YOU emailed Abhay Schweitzer on October 5,
25 2016 requesting that he revise the TECHNE contract for design services for the PROPERTY dated
26 October 4, 2016 entitled "Agreement Between Owner and Design Firm" to replace YOUR name as
27 "Owner" under the contract with BERRY's name.

28 ///

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 17:**

2 For two main reasons. First, I held a federal license and at the time of submittal of the CUP
3 Application and the difference between federal and state/local enforcement of laws related to marijuana
4 gave rise to uncertainty regarding the potential for adverse impact on my federal license. Second, for
5 convenience of administration during the anticipated application process, I elected to have my assistant
6 act as my agent in submitting the CUP Application.

7
8 **SPECIAL INTERROGATORY NO. 18:**

9 IDENTIFY all DOCUMENTS RELATING TO the purchase of the PROPERTY reviewed
10 by Gina Austin.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 18:**

12 Objection: This interrogatory invades the attorney-client privilege. [Cal. Evid. Code § 954.]
13 Based on the foregoing objection, Responding Party will not reply to this interrogatory.

14
15 **SPECIAL INTERROGATORY NO. 19:**

16 IDENTIFY all DOCUMENTS RELATING TO the purchase of the PROPERTY drafted or
17 revised by Gina Austin.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 19:**

19 Objection: This interrogatory invades the attorney-client privilege. [Cal. Evid. Code § 954.]
20 Subject to and without waiving this objection, Responding Party responds as follows: Gina
21 Austin did not draft the written agreement entered into on November 2, 2016, for the purchase and sale
22 of the property (the NOVEMBER DOCUMENT). Responding Party has produced previously all
23 responsive documents drafted by Ms. Austin or persons employed in her law firm.

24
25 **SPECIAL INTERROGATORY NO. 20:**

26 Please describe with specificity all activities undertaken by YOU and YOUR AGENTS
27 related to the CUP APPROVAL PROCESS for the period January 1, 2018 to April 30, 2018.

28 ///

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

2 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
3 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with
4 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but
5 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,
6 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else
7 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any
8 such AGENTS received compensation for their services from YOU or any other PERSON."

9 To the extent this interrogatory seeks information regarding the activities undertaken by Gina
10 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §
11 954] and attorney work-product doctrine. [] To the extent the interrogatory seeks information from
12 Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section 1, of the California
13 Constitution. To the extent it calls for opinions and descriptions of the activities of plaintiff's expert
14 witnesses in this case, this is an improper discovery procedure for obtaining the opinions of experts.
15 [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4th 1416, 1419.]

16 Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as
17 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete
18 in and of itself." [CCP § 2030.060(c)-(d).]

19 Notwithstanding and without waiving these objections, Responding Party responds as follows:
20 During the specified period of January 1, 2018 to April 30, 2018, Techne, its employees and
21 contractors lead by Abhay Schweitzer, worked approximately 55.30 hours on the approval of the
22 referenced CUP. This work included specifically revising its drawings in order to address
23 the previously received comments from the City of San Diego, coordinating with Geotechnical
24 consultant, coordinating with Government Relations consultant along with calls and email with the City
25 of San Diego Development Project Manager. A detailed record of this work is contained within its
26 client records. Others with knowledge of this work would include persons employed or hired by
27 the Geotechnical consultant and the Government Relations consultant to perform their work during this
28 time period.

1 **SPECIAL INTERROGATORY NO. 21:**

2 IDENTIFY all YOUR AGENTS who engaged in activities related to the CUP APPROVAL
3 PROCESS for the period January 1, 2018 to April 30, 2018.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 21:**

5 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
6 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with
7 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but
8 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,
9 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else
10 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any
11 such AGENTS received compensation for their services from YOU or any other PERSON."

12 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
13 IDENTIFY in the Interrogatories as: The term "IDENTIFY" as used herein in any Special Interrogatory
14 seeking information concerning any action YOU took and/or any activity in which YOU engaged is a
15 request that YOU provide:

- 16 a. The date(s) on which YOU took or engaged in each such action and/or in activity;
17 b. A description of each such action and/or activity;
18 c. The identity of each PERSON who participated in, witnessed and/or has knowledge of
19 each such action and/or activity; and
20 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)
21 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

22 To the extent this interrogatory seeks information regarding the activities undertaken by Gina
23 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §
24 954] and attorney work-product doctrine. [CCP § 2018.030.] To the extent the interrogatory seeks
25 information from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section
26 1, of the California Constitution. To the extent it calls for opinions and descriptions of the activities of
27 plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the
28 opinions of experts. [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4th 1416, 1419.]

1 Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as
2 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete
3 in and of itself." [CCP § 2030.060(c)-(d).]

4 Subject to and without waiving this objection, Responding Party responds as follows: The
5 persons primarily responsible for activities related to the CUP APPROVAL PROCESS for the period
6 January 1, 2018 to April 30, 2018, were: 1) TECHNE, led by Abhay Schweitzer, its employees
7 and contractors; and 2) Bartell & Associates, let by Jim Bartell, its employees and contractors, and
8 3) SCST, Inc., represented by Doug Skinner, its employees and contractors. .

9
10 **SPECIAL INTERROGATORY NO. 22:**

11 IDENTIFY all DOCUMENTS RELATING TO all activities undertaken by YOU and
12 YOUR AGENTS related to the CUP APPROVAL PROCESS for the period January 1, 2018 to the
13 April 30, 2018.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

15 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
16 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with
17 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but
18 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,
19 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else
20 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any
21 such AGENTS received compensation for their services from YOU or any other PERSON."

22 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
23 IDENTIFY in the Interrogatories as: The term "IDENTIFY" as used herein in any Special Interrogatory
24 seeking information concerning any action YOU took and/or any activity in which YOU engaged is a
25 request that YOU provide:

- 26 a. The date(s) on which YOU took or engaged in each such action and/or in activity;
27 b. A description of each such action and/or activity;
28 c. The identity of each PERSON who participated in, witnessed and/or has knowledge of

1 each such action and/or activity; and

2 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)
3 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

4 To the extent this interrogatory seeks information regarding the activities undertaken by Gina
5 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §
6 954] and attorney work-product doctrine. [CCP § 2018.030.] To the extent the interrogatory seeks
7 information from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section
8 1, of the California Constitution. To the extent it calls for opinions and descriptions of the activities of
9 plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the
10 opinions of experts. [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4th 1416, 1419.]

11 Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as
12 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete
13 in and of itself." [CCP § 2030.060(c)-(d).]

14 Subject to and without waiving this objection, Responding Party responds as follows:
15 During the specified period, TECHNE worked on the following drawings relating to activities
16 undertaken related to the CUP approval process:

17 G001

18 G002

19 TOPOGRAPHIC SURVEY

20 A101

21 A102a

22 A102b

23 A103

24 A104

25 A105

26 A106

27 A107

28 A108

1 A109

2 A201

3 A202

4 A203

5 A301

6 A302

7 Each of these particular drawings are a combination of various files referenced into one final
8 document or drawing. The references above are only to the final product by indicating the
9 numbering of each drawing sheet only.

10 In addition, TECHNE is in possession of numerous emails and digital chats both internal
11 and external to its organization that relate to its working on this CUP approval process. TECHNE
12 is also in possession of Response letters to each reviewing discipline received from the
13 Development Services Department

14
15 **SPECIAL INTERROGATORY NO. 23:**

16 Please describe with specificity the current status of the 6176 CUP APPLICATION.

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 23:**

18 As of November 20, 2018, the City of San Diego is reviewing the latest submittal which
19 was done on October 31, 2018. The following is a list of the due dates for each individual review,
20 as published by the Development Services Department:

- 21 1. Planning - Due 11.27.2018 - Completed 11.19.2018
22 2. Environmental - Due 11.30.2018
23 3. Landscape - Due 11.27.2018
24 4. Engineering - Due 11.27.2018
25 5. Transportation - Due 11.27.2018
26 6. Community Planning Group - Due 11.27.2018

27 Per TECHNE's communications with the City of San Diego Development Services staff, it has
28 received written confirmation that the only major issue, related to separation from an adjacent
Residential Zoned property, has been cleared. The latest submittal addressed this issue along with

1 a host of other minor corrections (cycle issues) per the City's last review. It is anticipated that at
2 the conclusion of the current review the issues will be cleared at which point the project's
3 Environmental Reviewer will issue the appropriate environmental determination. Should there be
4 no appeal filed related to the Environmental Determination, the project will then be scheduled for
5 a hearing with the Hearing Officer.

6
7 **SPECIAL INTERROGATORY NO. 24:**

8 IDENTIFY all conditions of approval yet to be completed and outstanding issues to be
9 resolved by YOU and YOUR AGENTS before the CUP will be eligible for approval by the CITY.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 24:**

11 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
12 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with
13 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but
14 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,
15 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else
16 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any
17 such AGENTS received compensation for their services from YOU or any other PERSON."

18 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
19 IDENTIFY in the Interrogatories as: The term "IDENTIFY" as used herein in any Special Interrogatory
20 seeking information concerning any action YOU took and/or any activity in which YOU engaged is a
21 request that YOU provide:

- 22 a. The date(s) on which YOU took or engaged in each such action and/or in activity;
23 b. A description of each such action and/or activity;
24 c. The identity of each PERSON who participated in, witnessed and/or has knowledge of
25 each such action and/or activity; and
26 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)
27 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

1 To the extent this interrogatory seeks information regarding the activities undertaken by Gina
2 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §
3 954] and attorney work-product doctrine. [CCP § 2018.030.] To the extent the interrogatory seeks
4 information from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section
5 1, of the California Constitution. To the extent it calls for opinions and descriptions of the activities of
6 plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the
7 opinions of experts. [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4th 1416, 1419.]

8 Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as
9 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete
10 in and of itself." [CCP § 2030.060(c)-(d).]

11 Subject to and without waving these objections, see the responses to SPECIAL
12 INTERROGATORY NO. 10 and NO. 11 above. Besides what has been detailed, Responding Party's
13 consultant is not aware of any other outstanding issues that need to be resolved. Responding Party is
14 currently waiting on confirmation that the issues have been resolved.

15
16 **SPECIAL INTERROGATORY NO. 25:**

17 IDENTIFY all actions YOU and YOUR AGENTS are taking to complete the outstanding
18 conditions of approval and resolve the outstanding the issues IDENTIFIED in your response to
19 Special Interrogatory No. 24.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 25:**

21 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
22 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with
23 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but
24 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,
25 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else
26 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any
27 such AGENTS received compensation for their services from YOU or any other PERSON."

28 Objection: The interrogatory is over-broad and unduly burdensome given the definition of

IDENTIFY in the Interrogatories as: The term "IDENTIFY" as used herein in any Special Interrogatory seeking information concerning any action YOU took and/or any activity in which YOU engaged is a request that YOU provide:

- a. The date(s) on which YOU took or engaged in each such action and/or in activity;
- b. A description of each such action and/or activity;
- c. The identity of each PERSON who participated in, witnessed and/or has knowledge of each such action and/or activity; and
- d. The identity of any and all notes, memoranda or any other DOCUMENT(S) memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

To the extent this interrogatory seeks information regarding the activities undertaken by Gina Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code § 954] and attorney work-product doctrine. [CCP § 2018.030.] To the extent the interrogatory seeks information from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section 1, of the California Constitution. To the extent it calls for opinions and descriptions of the activities of plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the opinions of experts. [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4th 1416, 1419.]

Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete in and of itself." [CCP § 2030.060(c)-(d).]

Subject to and without waiving these objections, Responding Party responds as follows: On October 31, 2018, TECHNE resubmitted the plans, documents and responses requested by the City of San Diego Development Services Department in relation to the previous submittal. Since that date, TECHNE's staff has monitored the review due dates to ensure receipt of a timely response from the reviewers and development project manager. It is anticipated that the latest submittal, which is under review, will result in all outstanding issues being cleared.

SPECIAL INTERROGATORY NO. 26:

Please describe with specificity all reasons YOU ceased to have a valid real estate

1 salesperson license issued by the California Bureau of Real Estate.

2 **RESPONSE TO SPECIAL INTERROGATORY NO. 26:**

3 Objection: The interrogatory calls for information which is neither relevant, nor calculated to
4 lead to the discovery of admissible evidence.

5 Subject to and without waiving this objection, Responding Party responds as follow: I let my
6 license expire.

7
8 **SPECIAL INTERROGATORY NO. 27:**

9 Please IDENTIFY all transactions for the purchase and sale of real property in which YOU
10 have an interest (whether or not your interest is evidenced by a DOCUMENT filed or recorded by/with
11 any governmental entity) for which BERRY acted as YOUR broker during YOUR licensure as a
12 California real estate salesperson.

13 **RESPONSE TO SPECIAL INTERROGATORY NO. 27:**

14 Objection: The interrogatory calls for information which is neither relevant, nor calculated to
15 lead to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will
16 not respond to this interrogatory.

17
18 **SPECIAL INTERROGATORY NO. 28:**

19 Please IDENTIFY all real properties in which YOU have an interest for which you have
20 received notice from law enforcement agencies and/or governmental entities that those properties
21 are potentially associated with unlicensed marijuana sales.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

23 Objection: The interrogatory calls for information which is neither relevant, nor calculated to
24 lead to the discovery of admissible evidence. The interrogatory is also unlimited as to time.

25 Subject to and without waiving this objection, Responding Party responds as follow: None
26 currently.

27
28 ///

1 **SPECIAL INTERROGATORY NO. 29:**

2 Please state the approximate number of transactions for the purchase and sale of residential
3 real property in which YOU represented buyers and/or sellers during YOUR career as a licensed
4 California real estate salesperson.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 29:**

6 Objection: The interrogatory calls for information which is neither relevant, nor calculated to
7 lead to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will
8 not respond to this interrogatory.

10 **SPECIAL INTERROGATORY NO. 30:**

11 Please state the approximate number of transactions for the purchase and sale of
12 commercial real PROPERTY in which YOU represented buyers and/or sellers during YOUR
13 career as a licensed California real estate salesperson.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

15 Objection: The interrogatory calls for information which is neither relevant, nor calculated to
16 lead to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will
17 not respond to this interrogatory.

19 **SPECIAL INTERROGATORY NO. 31:**

20 IDENTIFY all transactions for the purchase and sale of real property to which YOU were a
21 party as a buyer, seller or agent that closed using a maximum of a one-page document containing a
22 nonstandard real estate condition precedent (e.g., a condition precedent to obtain a Conditional
23 Use Permit for the subject property to allow the operation of a business) as the complete, final
24 integrated agreement for the sale of the subject real property in an arms-length transaction.

25 **RESPONSE TO SPECIAL INTERROGATORY NO. 31:**

26 Objection: The interrogatory calls for information which is neither relevant, nor calculated to
27 lead to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will
28 not respond to this interrogatory.

1
2 **SPECIAL INTERROGATORY NO. 32:**

3 IDENTIFY any state or local statute, ordinance or other law which would disqualify YOU
4 and/or any entity in which YOU have an equitable or financial interest from obtaining a
5 Conditional Use Permit to operate an MO in San Diego, California.

6 **RESPONSE TO SPECIAL INTERROGATORY NO. 32:**

7 Objection: The interrogatory calls for a legal opinion or conclusion.

8 Subject to and without waiving this objection, Responding Party responds as follow: Larry
9 Geraci is not aware of any state or local statute, ordinance or other law, which would disqualify him or
10 any entity in which he has an equitable or financial interest from obtaining a CUP to operate an MO in
11 San Diego, California.

12
13 **SPECIAL INTERROGATORY NO. 33:**

14 Please describe with specificity the history of YOUR relationship with Shawn Miller.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 33:**

16 Objection: The interrogatory calls for information which is neither relevant, nor calculated to
17 lead to the discovery of admissible evidence. Subject to and without waiving this objection,
18 Responding Party responds as follow: Larry Geraci does not have any relationship with Shawn Miller.

19
20 **SPECIAL INTERROGATORY NO. 34:**

21 Please describe with specificity the history of YOUR relationship with Aaron Magagna.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 34:**

23 Objection: The interrogatory calls for information which is neither relevant, nor calculated to
24 lead to the discovery of admissible evidence. Subject to and without waiving this objection,
25 Responding Party responds as follow: Larry Geraci does not have any relationship with Aaron
26 Magagna.

27
28 ///

1 **SPECIAL INTERROGATORY NO. 35:**

2 Have YOU or YOUR AGENTS requested that Shawn Miller contact Mr. Joe Hurtado
3 regarding any matter related to this litigation?

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 35:**

5 Not that I am aware. Moreover, I have never requested or authorized any person to do so.
6

7 **SPECIAL INTERROGATORY NO. 36:**

8 Please explain with specificity all reasons why BERRY, as YOUR AGENT, executed Form
9 DS-190 of the 6176 CUP APPLICATION as the "Owner" of the PROPERTY.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 36:**

11 This answer assumes the interrogatory is referring to Form DS-290 signed by Rebecca Berry on
12 October 31, 2016. On that form Rebecca Berry was identified as a business owner, not the property
13 owner. On that same date Rebecca Berry also signed Form DS-3032 submitted to the CITY as part of
14 the 6176 CUP APPLICATION, and in box 8 Rebecca Berry was identified as the Applicant who was
15 an "Other Person per M.C. Section 112.0102."
16

17 **SPECIAL INTERROGATORY NO. 37:**

18 Please explain with specificity all reasons why BERRY, as YOUR AGENT, executed Form
19 DS-318 of the 6176 CUP APPLICATION as "Tenant/Lessee" of the PROPERTY.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 37:**

21 Rebecca Berry understood at the time she signed Form DS-318 that she was the agent of Mr.
22 Geraci who had an interest in the property and that it was proper for her to sign the form as it had been
23 drafted for her to sign.
24

25 **SPECIAL INTERROGATORY NO. 38:**

26 Please explain with specificity all reasons why YOU authorized the submission of the 6176
27 CUP APPLICATION notwithstanding the conflicting information in Forms DS-190, DS-318 and
28 DS-3032 regarding BERRY's alleged interest in the PROPERTY.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 38:**

2 Objection: The interrogatory assumes that Plaintiff authorized the submission of the 6176 CUP
3 APPLICATION with "conflicting information" and with knowledge of the "conflicting information."
4 Subject to and without waiving this objection, Responding Party responds as follow: The listed forms
5 were submitted in the form provided by the consultants.

6
7 **SPECIAL INTERROGATORY NO. 39:**

8 IDENTIFY each written communication between YOU and COTTON - including but not
9 limited to emails, text messages or other DOCUMENTS - and the specific language therein that
10 YOU allege are an attempt to renegotiate the terms of the NOVEMBER DOCUMENT.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 39:**

12 Responding Party has previously produced all documents evidencing an attempt to negotiate the
13 NOVEMBER DOCUMENT, all of which were created during the time period of approximately
14 November 3, 2016, through the filing of the complaint on or about March 21, 2017.

15
16 **SPECIAL INTERROGATORY NO. 40:**

17 IDENTIFY each written communication between YOU and COTTON - including but not
18 limited to emails, text messages or other DOCUMENTS - and the specific language therein that
19 reflects YOU intended to provide for the employment of COTTON in any capacity at any point in
20 time.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 40:**

22 Responding Party has previously produced all documents that are written communications
23 between Responding Party and Mr. Cotton regarding any and all matters. Responding Party never
24 agreed to provide Mr. Cotton employment in any capacity at any point in time.

25
26 **SPECIAL INTERROGATORY NO. 41:**

27 Please describe with specificity the "alternative consideration in lieu of Deposit" YOU
28 allege YOU provided to COTTON as set forth in Paragraph 3a of the draft Purchase Agreement

1 (First Draft) YOU emailed to COTTON on February 27, 2017 at 8:49 a.m.

2 **RESPONSE TO SPECIAL INTERROGATORY NO. 41:**

3 Objection: Calls for a legal opinion or conclusion.

4 Subject to and without waiving this objection, Responding Party responds as follows: The First
5 Draft was prepared by counsel and Responding Party does not know what counsel intended.

7 **SPECIAL INTERROGATORY NO. 42:**

8 Please describe with specificity the date(s), time(s) and circumstance(s) under which
9 COTTON agreed to accept the "alternative consideration in lieu of Deposit" set forth in Paragraph
10 3a of the Purchase Agreement (First Draft) YOU emailed to COTTON on February 27, 2017 at
11 8:49 a.m.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 42:**

13 Objection: Calls for a legal opinion or conclusion.

14 Subject to and without waiving this objection, Responding Party responds as follows: The First
15 Draft was prepared by counsel and Responding Party does not know what counsel intended.

17 **SPECIAL INTERROGATORY NO. 43:**

18 IDENTIFY all PERSONS who witnessed YOU provide COTTON the "alternative
19 consideration in lieu of Deposit" as set forth in Paragraph 3 a of the Purchase Agreement (First
20 Draft) YOU emailed to COTTON on February 27, 2017 at 8:49 a.m.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 43:**

22 Objection: Calls for a legal opinion or conclusion.

23 Subject to and without waiving this objection, Responding Party responds as follows: The First
24 Draft was prepared by counsel and Responding Party does not know what counsel intended.

26 **SPECIAL INTERROGATORY NO. 44:**

27 IDENTIFY all DOCUMENTS evidencing that YOU provided COTTON the "alternative
28 consideration in lieu of Deposit" as set forth in Paragraph 3a of the Purchase Agreement (First

1 Draft) YOU emailed to COTTON on February 27,2017 at 8:49 a.m.

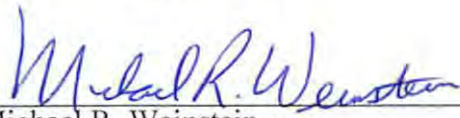
2 **RESPONSE TO SPECIAL INTERROGATORY NO. 44:**

3 Objection: Calls for a legal opinion or conclusion.

4 Subject to and without waiving this objection, Responding Party responds as follows: The First
5 Draft was prepared by counsel and Responding Party does not know what counsel intended.

6
7 Dated: November 21, 2018

FERRIS & BRITTON,
A Professional Corporation

8
9 By: 
10 Michael R. Weinstein
11 Scott H. Toothacre
12 Attorneys for Plaintiff/Cross-Defendant
LARRY GERACI and Cross-Defendant
REBECCA BERRY

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I am the Plaintiff and a Cross-Defendant in the above-captioned lawsuit. I have read the foregoing document entitled **PLAINTIFF/CROSS-DEFENDANT LARRY GERACI'S ANSWERS TO FORM INTERROGATORIES, SET TWO, PROPOUNDED BY DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON**. The matters stated in it are true to the best of my knowledge and belief.

LARRY GERACI

September 26, 2018

Via Email: abhay@techne-us.com

Abhay Schweitzer
Techne
3956 30th Street
San Diego, CA 92104

Subject: Federal Blvd MMCC Fourth Assessment Letter; Project No. 520606; Internal Order No. 24007070; Encanto Neighborhoods.

Dear Mr. Schweitzer:

The Development Services Department has completed the third review of the project referenced above, and described as a Process Three, Conditional Use Permit to demolish an existing structure and the construction of a two-story, approximately 2,800-square-foot building, for the operation of a Marijuana Outlet on a site located at 6176 Federal Boulevard in the CO-2-1 Zone within the Encanto Neighborhoods Community Plan area.

Enclosed is a Cycle Issues Report (Enclosure 1), which contains review comments from staff representing various disciplines. The purpose of this assessment letter is to summarize the significant project issues and identify a course of action for the processing of your project.

If any additional requirements should arise during the subsequent review of your project, we will identify the issue and the reason for the additional requirement. To resolve any outstanding issues, please provide the information that is requested in the Cycle Issues Report. If you choose not to provide the requested additional information or make the requested revisions, processing may continue. However, the project may be recommended for denial if the remaining issues cannot be satisfactorily resolved and the appropriate findings for approval cannot be made.

The Development Services Department will generally formulate a formal recommendation for your project subsequent to completion of the following milestones: 1) After the City Council recognized Community Planning Group has provided a formal project recommendation; 2) After all City staff project-review comments have been adequately addressed; and 3) During the final stages of the environmental review process.

As your Development Project Manager, I will coordinate all correspondence, emails, phone calls, and meetings directly with the applicants assigned "Point of Contact." You have been designated as the Point of Contact for this project. Please notify me should the Point of Contact change while I am managing this project.

- I. **REQUIRED APPROVAL:** Your project as currently proposed requires a Process Three, Conditional Use Permit (CUP) for the proposed Marijuana Outlet pursuant to San Diego Municipal Code (SDMC) Section 126.0303(a). The decision to approve, conditionally approve, or deny the project will be made by the Hearing Officer with appeal rights to the Planning Commission.
- II. **SIGNIFICANT PROJECT ISSUES:** The significant project issues are listed below. Resolution of these issues could affect your project. Additional explanation is provided in the Cycle Issues Report. Please carefully review the City staff comments and respond accordingly. Please note the following key issues:
 - Planning Review staff again notes the project site is within 100 feet of residential zoned properties, the RS-1-7 Zone. Per SDMC Section 141.0504(a) (2), Marijuana Outlets shall maintain a separation of 100 feet from a residential zone. Please clarify and respond to the appropriate measurement and indicate on the development plans as required. City staff would recommend denial of the permit if the project does not meet the separation requirement for Residential Zones within 100 feet.
- III. **STUDIES/REQUIRED REPORTS:** A number of documents have been identified as necessary to the project's review. Reference the attached Submittal Requirements Report (Enclosure 2).
- IV. **PROJECT ACCOUNT STATUS:** Our current accounting system does not provide for real-time information regarding account status and majority of the recent City staff charges **have not** been posted on the account; however, our latest data indicates you have deposit account deficit of approximately \$1,400.00. **Please pay the invoice immediately (Enclosure 3).**

During the processing of your project, your application's Financially Responsible Party will continue to receive monthly statements with the break-down of staff charges to your account. The minimum balance required for your application is \$5,000.00, <https://www.sandiego.gov/sites/default/files/dsdib503.pdf>. To avoid project delays due to insufficient account funds, please ensure that your deposit account maintains the minimum account balance at all times.

For your convenience, deposits can be made anytime online through Open DSD, <http://www.sandiego.gov/development-services/opensds/>, and by entering your project number in the "Project ID" field, <http://opensds.sandiego.gov/web/approvals/>. Also, any invoices can be paid online by searching for the invoice number,

<http://opensds.sandiego.gov/web/invoices/> or in person at the Cashier, located on the 3rd Floor of the Development Services Center.

- V. **TIMELINE:** Upon your review of the attached Cycle Issues Report, you may wish to schedule a meeting with staff and your consultants prior to resubmitting the project. Please contact me if you wish to schedule a meeting with staff. During the meeting, we will also focus on key milestones that must be met in order to facilitate the review of your proposal and to project a potential timeline for a hearing date. Your next review cycle should take approximately 18 business days to process.

The SDMC Section 126.0114 requires that a development permit application be closed if the applicant fails to submit or resubmit requested materials, information, fees, or deposits within 90 calendar days. Once closed, the application, plans and other data submitted for review may be returned to the applicant or destroyed. To reapply, the applicant shall be required to submit a new development permit application with required submittal materials, and shall be subject to all applicable fees and regulations in effect on the date the new application is deemed complete.

If you wish to continue processing this project, please note that delays in resubmitting projects and/or responding to City staff's inquiries negatively impact this Department's ability to effectively manage workload, which can lead to both higher processing costs and longer timelines for your project.

- VI. **RESUBMITTALS/NEXT STEPS:** Project re-submittals are done on a walk-in basis. Please check-in on the third floor of the Development Service Center (1222 First Avenue) to be placed on the list for the submittal counter. ***Project re-submittals directly to the Development Project Manager will not be accepted.*** Please be prepared to provide the following:

A. Plans and Reports: Provide the number of sets of plans and reports as shown on the attached Submittal Requirements Report. The plans should be folded to an approximate 8 ½ x 11 inch size.

B. Response to Cycle Issues Report: Prepare a cover letter that specifically describes how you have addressed each of the issues identified in the Cycle Issues Report and any issues identified in this cover letter, if applicable. Or, you may choose to simply submit the Cycle Issues Report, identifying within the margins how you have addressed the issue. If the issue is addressed on one or more sheets of the plans or the reports, please reference the plan, sheet number, report or page number as appropriate. If it is not feasible to address a particular issue, please indicate the reason. Include a copy of this Assessment Letter, Cycle Issues Report and your response letter if applicable, with each set of plans.

C. Pay Invoice: Please pay enclosed invoice prior to your project re-submittal. The re-submittal **cannot** be distributed to City staff when an invoice is outstanding.

- VII. COMMUNITY PLANNING GROUP:** Staff provides the decision maker with the recommendation from your locally recognized community planning group. If you have not already done so, please contact Kenneth Malbrough, Chairperson of the Encanto Neighborhoods Community Planning Group, at (619) 843-6721 to schedule your project for a recommendation from the group. If you have already obtained a recommendation from the community planning group, in your resubmittal, if applicable, please indicate how your project incorporates any input suggested to you by the community planning group.

Information Bulletin 620, "Coordination of Project Management with Community Planning Committees" (available at <http://www.sandiego.gov/development-services>), provides some valuable information about the advisory role the Community Planning Group. Council Policy 600-24 provides standard operating procedures and responsibilities of recognized Community Planning Committees and is available at <http://www.sandiego.gov/city-clerk/officialdocs/index.shtml>.

- VIII. STAFF REVIEW TEAM:** Should you require clarification about specific comments from the staff reviewing team, please contact me, or feel free to contact the reviewer directly. The names and telephone numbers of each reviewer can be found on the enclosed Cycle Issues Report.

- IX. PROJECT ISSUE RESOLUTION CONFERENCE:** Project Issue Resolution (PIR) conferences provide customers an opportunity to have issues heard and considered by executive department management. A PIR will be considered if, after the issuance of the third Assessment Letter for discretionary projects, customers and staff have been unable to resolve project issues. The PIR would address issues such as disagreements between the applicant and staff on interpretations of codes or ordinances, requests for additional information or studies, or project-related processing requirements. Any determinations from a PIR are not binding on any City decision-making body, such as City Council, Planning Commission, or Hearing Officer. Qualifying PIR requests should be coordinated with your Development Project Manager.

In conclusion, please note that information forms and bulletins, project submittal requirements, and the Land Development Code may be accessed on line at <http://www.sandiego.gov/development-services>. Many land use plans for the various communities throughout the City of San Diego are now available on line at <http://www.sandiego.gov/planning/community/profiles/index.shtml>.

To view project details online, visit: <http://www.sandiego.gov/development-services/opensds/>.

Page 5
Abhay Schweitzer
September 26, 2018

For modifications to the project scope, submittal requirements or questions regarding any of the above, please contact me prior to resubmittal. I may be reached by telephone at (619) 236-6327 or via e-mail at CCac@sandiego.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cherlyn Cac', with a stylized flourish at the end.

for

Cherlyn Cac
Development Project Manager

Enclosures:

1. Cycle Issues Report
2. Submittal Requirements Report
3. Invoice

cc: File
Kenneth Malbrough, Chairperson, Encanto Neighborhoods Community Planning Group
Elizabeth Dickson, Planning Department
Reviewing Staff



Cycle Issues

9/26/18 9:18 am

Page 1 of 14

L64A-003A

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

Project Information

Project Nbr: **520606** Title: Federal Blvd MMCC
Project Mgr: Cac, Cheryl (619) 236-6327 ccac@sanidiego.gov



Review Information

Cycle Type: 9 Submitted (Multi-Discipline) **Submitted:** 08/22/2018 Deemed Complete on 08/22/2018
Reviewing Discipline: LDR-Planning Review **Cycle Distributed:** 08/22/2018
Reviewer: Moshirian, Tania **Assigned:** 08/23/2018
(619) 446-5183 **Started:** 09/13/2018
Tmoshirian@sanidiego.gov **Review Due:** 09/13/2018
Hours of Review: 1.50 **Completed:** 09/14/2018 **COMPLETED LATE**
Next Review Method: Submitted (Multi-Discipline) **Closed:** 09/19/2018

- The review due date was changed to 09/18/2018 from 09/13/2018 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmmts/Regs.
- We request a 5th complete submittal for LDR-Planning Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 22 outstanding review issues with LDR-Planning Review (20 of which are new issues).
- Last month LDR-Planning Review performed 115 reviews, 89.6% were on-time, and 42.6% were on projects at less than < 3 complete submittals.

Permits

| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|--|
| <input checked="" type="checkbox"/> | 9 | CUP Findings: Reference SDMC §126.0305 (a) through (d). An application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the findings for this permit. At the next submittal, provide project support by addressing how the Federal Blvd MMCC makes each CUP finding. (From Cycle 3) |

MMCC Review

| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|--|
| <input checked="" type="checkbox"/> | 14 | Residential Zone: Federal Blvd is the PROW between the subject site and the residential zone RS-1-7. Federal Blvd is not considered a barrier impeding direct physical access between MMCC and residential zone. The applicant submits Sheet A103, a Site Plan showing a proposed "Irrevocable Offer of Dedication" which Planning determines may satisfy the code requirement for a separation of 100' if supported by LDR Engineering. Without the 10' or greater dedication, Planning will not support this project. [Continued] (From Cycle 3) |
| <input checked="" type="checkbox"/> | 15 | Major Issue: LDR Engineering requires a ROW dedication to create a 10 ft curb to PL distance. Additional dedication by Transportation may also be requested but has not yet been determined. In accordance with Section 113.0225(a)(2) a 100 ft separation distance from the RS-1-7 zone to the pre-dedication PL for Federal MMCC does not exist. Also, a ROW dedication > than the 10' C to PL reqmt is shown (Ref: A102). Planning defers to Engineering & Transportation for dedication requirements after which the separation distance can be determined. (From Cycle 3) |

CO-2-1 Dev Reg Review

| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|--|
| <input checked="" type="checkbox"/> | 26 | Reference Table 131-05D Development Regulation Review for the CO Zones Front Setback: 10' Minimum with a 25' Maximum Front Setback. Two code sections apply which are provided as: 1. [See Section 131.0543(a)]; 2. Footnote 2: See section 131.0543(a)(2). The front setback is incorrectly applied. See Diagram 131-05B which illustrates how this code section shall be applied. Revise your design to demonstrate the maximum setback applied to 70 percent of the street frontage with the remaining 30 percent not required to observe the maximum setback (From Cycle 3) |

General Plan and Community Pla

| Cleared? | Issue Num | Issue Text |
|----------|-----------|------------|
|----------|-----------|------------|

For questions regarding the 'LDR-Planning Review' review, please call Tania Moshirian at (619) 446-5183. Project Nbr: 520606 / Cycle: 9





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| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|---|
| <input checked="" type="checkbox"/> | 38 | Policy guidance is provided by the GP and CP for commercial uses. Please consider the following elements in your next submittal: 1. Development of new infill buildings should take into account green building practices and sustainability; 2. Designing for defensible space; 3. Incorporate Urban Design policy as it relates to character and identity of the existing urban form, including public spaces and village design, neighborhood and community gateways and linkages, building types and massing, streetscape and pedestrian orientation, and other unique aspects of the Encanto community. (From Cycle 3) |

Second Review

| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|---|
| <input checked="" type="checkbox"/> | 42 | Issue 2 - The project scope has changed from the first review. The project is proposing a 2 story 2,798 SF building with the proposed demolition of an existing one story 2,086 SF office building on the premises. The proposed Marijuana outlet will occupy the proposed 2 story building. Additional issues have been added for the change in scope. (Information Only - No Response Required) (From Cycle 6) |
| <input type="checkbox"/> | A 43 | Issue 9 - LDR-Planning must recommend denial of the project as it does not meet the separation requirement for Residential Zones within 100 Feet. (From Cycle 6) |
| <input checked="" type="checkbox"/> | 44 | Issue 14/15 - Plans identify an Irrevocable Offer of Dedication (IOD). The IOD does not constitute as the property line. Per SDMC 113.0246 the measurement is taken from the public right-of-way. Per engineering comments, it appears the public right-of-way will start 10 feet from the curb. Please revise plans to show the separation distance from the property line to the Residential zone. (From Cycle 6) |
| <input checked="" type="checkbox"/> | 46 | Issue 26 - The proposed project does not meet the front setback requirements. Please review issue 26. The building has to span at least 70% of street frontage while meeting both min and max setback requirements. (From Cycle 6) |
| <input checked="" type="checkbox"/> | 49 | Issue 29 - The project is not at 26' in height on the Cover Sheet. However, please show clearly on the elevations. Review Chapter 11 Rules for Calculation and Measurements on measuring height (SDMC 113.0270) (From Cycle 6) |
| <input checked="" type="checkbox"/> | 56 | Issue 38 - Please demonstrate/provide a response how the project will meet the requirements. (From Cycle 6) |
| <input type="checkbox"/> | A 60 | Marijuana Outlets are prohibited within 1,000 feet of certain uses. City staff relies on information provided by applicants to determine what uses are within 1,000 feet. The applicant is also required to sign an affidavit that indicates that the information provided is accurate. In addition, City staff uses resources available on the internet, on the City's Project Tracking System, and personal knowledge of the area. (Cont Below) (From Cycle 6) |
| <input type="checkbox"/> | G 61 | City staff is also expecting the public to identify conflicts throughout the processing of the use permit. The 1000 ft distance is measured in accordance with Section 113.0225. [Information Item - No Response Required] (From Cycle 6) ACKNOWLEDGED. |

Draft Conditions

| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|--|
| <input checked="" type="checkbox"/> | 62 | G002 - Please remove MMCC Conditional Use Permit Notes. Please only include draft conditions per SDMC 141.0504(b) - (m) and additional draft conditions. Additional Draft conditions can be located under Issues 63/64/21/22 (From Cycle 6) |
| <input checked="" type="checkbox"/> | 63 | The Owner/Permittee shall install a combination of full-height bullet resistant glass, plastic or laminate shield and bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, at the reception area. (From Cycle 6) |
| <input checked="" type="checkbox"/> | 64 | The Owner/Permittee shall install full-height bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, in common areas with other tenants, reception area and vault room. (From Cycle 6) |

3rd Review

| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|---|
| <input checked="" type="checkbox"/> | 65 | Issue 14/44 - The proposed project site is located within 100' of a residential zone. The IOD does not constitute as the property line. Please see Issue 44. Please correctly identify the property line. (From Cycle 7) |
| <input checked="" type="checkbox"/> | 66 | Issue 26/46 - The property line is not from the IOD. An IOD is an offer of dedication and per engineering comments no IOD is needed at this time. However, there is a dedication required to achieve the 10' curb to PL dimension. Therefore, the new PL, based on Staff's measurement will not satisfy the 100' separation. The new PL will not be to the IOD line. (Cont below) (From Cycle 7) |
| <input checked="" type="checkbox"/> | 67 | Sheet C-1 shows the proposed RVW, which should constitute as the new PL. Please revise measurements. (From Cycle 7) |
| <input checked="" type="checkbox"/> | 68 | Issue 26/46 - Per property line dimensions provided, a minimum of 42.41' (70% * 60.58) MUST meet the maximum setback of 25'. The plans are still showing greater than 30 % of the building is located behind the 25' setback line. Please revise. The setbacks can be taken from the existing PL. (From Cycle 7) |

For questions regarding the 'LDR-Planning Review' review, please call Tania Moshirian at (619) 446-5183. Project Nbr: 520606 / Cycle: 9





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| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|--|
| <input checked="" type="checkbox"/> | 71 | Issue 29/49 - The height needs to be taken to the highest point, this includes the mechanical enclosures. Please revise height. It appears the height will comply with regulations, however, it needs to correctly be shown on the plans. (From Cycle 7) |
| <input checked="" type="checkbox"/> | 74 | Issue 38/56 - No Response provided. (From Cycle 7) |
| <input checked="" type="checkbox"/> | 75 | The CAP checklist provided is still showing MMCC. Per notes on plans it is understood that this is moving forward as an MO. Please revise. (From Cycle 7) |

4th Review

| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|---|
| <input checked="" type="checkbox"/> | 80 | Scope Change: The proposed project is a Conditional Use Permit (CUP) for a Marijuana Outlet (MO) at 6176 Federal Boulevard. Applicant is proposing to demolish the existing approximately 2,090 sq. ft. building and operate the proposed MO within a new approximately 3,012 sq. ft. building. (New Issue) |
| <input type="checkbox"/> | A 81 | Dedication: Per Engineering comment 45, the project will be proposing a dedication for a 14' curb to PL. Sheet C-1 shows a 14' curb to PL. However the Site Plan and Sheet A102b (where it shows the distance measurement to the residential zone) shows a curb to PL of 14.27. The separation measurement is being taken from the new PL with a curb to PL of 14.27, which is incorrect. Please clarify and show a the distance measurement based on a 14' curb to PL. (New Issue) |
| <input type="checkbox"/> | A 82 | Armed Guard: An armed guard will not be a requirement. However, plans show that a armed guard will be provided. Is the applicant proposing additional security measures? (New Issue) |
| <input type="checkbox"/> | B 83 | Trash Enclosure: The layout of the parking/trash enclosure location has been revised from the last submittal. Sheet C-1 and Landscape plans are showing the trash enclosures at a different location then what is proposed on the site plan. Please ensure consistency. (New Issue) SEND UPDATED SITE PLAN TO CONSULTANTS TO MATCH |

Draft Conditions

| Cleared? | Issue Num | Issue Text |
|--------------------------|-----------|---|
| <input type="checkbox"/> | G 84 | The Owner/Permittee shall provide lighting to illuminate the interior of the Marijuana Outlet, façade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties. (New Issue) |
| <input type="checkbox"/> | G 85 | The sale of marijuana shall be prohibited without a valid license from the State authorizing such activity. (New Issue) |
| <input type="checkbox"/> | G 86 | The Marijuana Outlet must comply with Chapter 4, Article 2, Division 15 of the San Diego Municipal Code, including obtaining a Marijuana Outlet Permit, and Background Checks and Reporting Convictions. (New Issue) |
| <input type="checkbox"/> | G 87 | Consultations by medical professionals shall not be a permitted accessory use at this Marijuana Outlet. (New Issue) |
| <input type="checkbox"/> | G 88 | The Owner/Permittee shall install and maintain operable security cameras and a metal detector for security to the satisfaction of Development Services Department. The security cameras shall have and use a recording device that maintains the recordings for a minimum of 30 days. This Marijuana Outlet shall also include alarms and two security guards. The security guards shall be licensed by the State of California. Two security guards must be on the premises during business hours. |
| | | (Cont below) (New Issue) |
| <input type="checkbox"/> | G 89 | Two security guards must be on the premises during business hours. At least one security guard must be on the premises 24 hours a day, seven days a week. The security guards should only be engaged in activities related to providing security for the Marijuana Outlet, except on an incidental basis. (New Issue) |
| <input type="checkbox"/> | G 90 | The Owner/Permittee shall install a combination of full-height bullet resistant glass, plastic or laminate shield and bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, at the reception area. (New Issue) |
| <input type="checkbox"/> | G 91 | The Owner/Permittee shall install full-height bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, at all walls adjoining common areas and other tenants, and vault room. (New Issue) |
| <input type="checkbox"/> | G 92 | All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Ground signs shall not be pole signs. A primary sign shall be posted on the outside of the Marijuana Outlet and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors. (New Issue) |
| <input type="checkbox"/> | G 93 | The Owner/Permittee shall post and maintain a sign showing the name and emergency contact phone number of an operator or manager in a location visible from outside the Marijuana Outlet in font size at least two inches in height. (New Issue) |
| <input type="checkbox"/> | G 94 | The Marijuana Outlet shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week. (New Issue) |
| <input type="checkbox"/> | G 95 | The use of vending machines which allow access to marijuana and marijuana products except by a responsible person, as defined in the SDMC Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to marijuana and marijuana products without a human intermediary. (New Issue) |

For questions regarding the 'LDR-Planning Review' review, please call Tania Moshirian at (619) 446-5183. Project Nbr: 520606 / Cycle: 9





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| <u>Issue</u> | | <u>Issue Text</u> |
|--------------------------|-------------|---|
| <u>Cleared?</u> | <u>Num</u> | |
| <input type="checkbox"/> | G 96 | The Owner/Permittee shall maintain the Marijuana Outlet, adjacent public sidewalks, and areas under the control of the Owner/Permittee, free of litter and graffiti at all times. (New Issue) |
| <input type="checkbox"/> | G 97 | The Owner/Permittee shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours. (New Issue) |
| <input type="checkbox"/> | G 98 | The Owner/Permittee shall provide a sufficient odor absorbing ventilation and exhaust system capable of eliminating excessive or offensive odors causing discomfort or annoyance to any reasonable person of normal sensitivities standing outside of the structural envelope of this Marijuana Outlet facility in compliance with SDMC Section 142.0710. (New Issue) |
| <input type="checkbox"/> | G 99 | Medical marijuana, recreational marijuana, or marijuana products, in any form, shall not be consumed anywhere within the property. (New Issue) |





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Review Information

| | | |
|--|--------------------------------------|-------------------------------|
| Cycle Type: 9 Submitted (Multi-Discipline) | Submitted: 08/22/2018 | Deemed Complete on 08/22/2018 |
| Reviewing Discipline: LDR-Environmental | Cycle Distributed: 08/22/2018 | |
| Reviewer: Lindquist, Rachael (619) 446-5129 Rlindquist@sandiego.gov | Assigned: 08/23/2018 | |
| | Started: 09/17/2018 | |
| Hours of Review: 3.00 | Review Due: 09/18/2018 | |
| Next Review Method: Submitted (Multi-Discipline) | Completed: 09/18/2018 | COMPLETED ON TIME |
| | Closed: 09/19/2018 | |

The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
 We request a 5th complete submittal for LDR-Environmental on this project as: Submitted (Multi-Discipline).
 The reviewer has requested more documents be submitted.
 Your project still has 10 outstanding review issues with LDR-Environmental (5 of which are new issues).
 Last month LDR-Environmental performed 137 reviews, 83.9% were on-time, and 30.5% were on projects at less than < 3 complete submittals.

Project Issues

LDR-Planning

| <u>Cleared?</u> | <u>Issue</u> <u>Num</u> | <u>Issue Text</u> |
|--------------------------|----------------------------|---|
| <input type="checkbox"/> | G 7 | EAS will coordinate with LDR-Planning regarding MMCC Ordinance issues and project community plan consistency. (From Cycle 3) ACKNOWLEDGED. |

LDR- Landscape

| <u>Cleared?</u> | <u>Issue</u> <u>Num</u> | <u>Issue Text</u> |
|--------------------------|----------------------------|--|
| <input type="checkbox"/> | G 8 | Landscape staff has requested additional information regarding amount and type of landscaping. (From Cycle 3) ACKNOWLEDGED. |

Determination

| <u>Cleared?</u> | <u>Issue</u> <u>Num</u> | <u>Issue Text</u> |
|--------------------------|----------------------------|--|
| <input type="checkbox"/> | G 9 | All disciplines have also requested plan revisions. Until all requested information is submitted and all issues are cleared, EAS is unable to make an environmental determination. Please be aware that the environmental review may change in response to any project changes and/or new information. Additionally, the new information may lead to the requirement of new and/or additional technical studies. (From Cycle 3) ACKNOWLEDGED. |

October 2017 Review

Revised Project Scope

| <u>Cleared?</u> | <u>Issue</u> <u>Num</u> | <u>Issue Text</u> |
|-------------------------------------|----------------------------|---|
| <input checked="" type="checkbox"/> | 10 | The project has a revised scope. The applicant now proposes a two-story 2798.9-square-foot building instead of a 1,995 square foot building. (From Cycle 6) |

Revised Project Issues

| <u>Cleared?</u> | <u>Issue</u> <u>Num</u> | <u>Issue Text</u> |
|-------------------------------------|----------------------------|---|
| <input checked="" type="checkbox"/> | 12 | Outstanding issue remain with LDR-Landscape, Engineering, Geology, Transportation, and Planning reviewing disciplines. (From Cycle 6) |

July 2018 Review

Project Issues

| <u>Cleared?</u> | <u>Issue</u> <u>Num</u> | <u>Issue Text</u> |
|--------------------------|----------------------------|---|
| <input type="checkbox"/> | B 13 | CAP Checklist: The checklist is not filled out correctly. Please change the description of the project to say Marijuana Outlet as indicated in the project scope. All answers should either have "Yes" checked off if the project is implementing those design measures, or a "N/A" answer if it does not apply. Please see link below and resubmit. https://www.sandiego.gov/sites/default/files/city_of_san_diego_cap_checklist.pdf (From Cycle 7) |
| <input type="checkbox"/> | G 15 | This project is subject to Tribal Consultation under AB 52. EAS staff will distribute notification to the local Kumeyaay community for possible consultation on this project. Please note that a request for consultation must be submitted by the tribe within 30days of initial notification. This issue area will be evaluated further once a response from the local tribes has been received. (From Cycle 7) ACKNOWLEDGED. |

For questions regarding the 'LDR-Environmental' review, please call Rachael Lindquist at (619) 446-5129. Project Nbr: 520606 / Cycle: 9





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Determination

| Cleared? | Issue Num | Issue Text |
|--------------------------|-----------|---|
| <input type="checkbox"/> | G 16 | EAS cannot make a determination on the project until all issues in the current review cycle, in previous cycles, and all issues with other reviewers are addressed. (From Cycle 7) ACKNOWLEDGED. |

September 2018 Review

Historical Resources

| Cleared? | Issue Num | Issue Text |
|-------------------------------------|-----------|---|
| <input checked="" type="checkbox"/> | 17 | Archaeological Resources - Staff determined that due to the soil conditions and the low potential for archaeological resources to occur on or adjacent to the site, no further evaluation is required and impacts to archaeological resources would not rise to a level of significance. EAS has no further comment. (New Issue) |
| <input type="checkbox"/> | G 18 | Tribal Cultural Resources - With updated information, EAS can now distribute notification to local tribes to see if there is a request for AB 52 consultation on this project. EAS will update applicant with response in the next review. Please note that a request for consultation must be submitted by the tribe within 30 days of initial notification. This issue area will be evaluated further once a response from the local tribes has been received. (New Issue) ACKNOWLEDGED. |

Project Scope

| Cleared? | Issue Num | Issue Text |
|--------------------------|-----------|---|
| <input type="checkbox"/> | G 19 | *Revised* The project proposes to demolish an existing one-story commercial building to construct a 3,012 sq. ft. two-story building for a proposed Marijuana Outlet (MO). (New Issue) CORRECT |

CAP Checklist

| Cleared? | Issue Num | Issue Text |
|--------------------------|-----------|--|
| <input type="checkbox"/> | B 21 | LDR-Transportation has made comments regarding the CAP Checklist. Please refer to their review and address. Please resubmit. (New Issue) |

CEQA

| Cleared? | Issue Num | Issue Text |
|--------------------------|-----------|--|
| <input type="checkbox"/> | G 20 | Please address all issues in the current review, previous review cycles, and in all other review disciplines before EAS can make a final environmental determination on the project. (New Issue) PLEASE SEE RESPONSES TO THE ABOVE CURRENT AND PREVIOUS CYCLE ISSUES |





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Review Information

| | | |
|---|--------------------------------------|-------------------------------|
| Cycle Type: 9 Submitted (Multi-Discipline) | Submitted: 08/22/2018 | Deemed Complete on 08/22/2018 |
| Reviewing Discipline: LDR-Engineering Review | Cycle Distributed: 08/22/2018 | |
| Reviewer: Schultz, Louis | Assigned: 08/28/2018 | |
| (619) 557-7908 | Started: 09/14/2018 | |
| Lschultz@sandiego.gov | Review Due: 09/13/2018 | |
| Hours of Review: 6.00 | Completed: 09/14/2018 | COMPLETED LATE |
| Next Review Method: Submitted (Multi-Discipline) | Closed: 09/19/2018 | |

- The review due date was changed to 09/18/2018 from 09/18/2018 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Change In Project Scope.
- We request a 5th complete submittal for LDR-Engineering Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 11 outstanding review issues with LDR-Engineering Review (11 of which are new issues).
- Last month LDR-Engineering Review performed 130 reviews, 90.0% were on-time, and 31.0% were on projects at less than < 3 complete submittals.

1st Review

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|---|
| <input checked="" type="checkbox"/> | 1 | The Engineering Review Section has reviewed the subject development and have the following comments that need to be addressed prior to a Public Hearing. Upon resubmittal, we will complete our review of the Conditional Use Permit. |
| | | (From Cycle 3) |

2nd Review

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|--|
| <input checked="" type="checkbox"/> | 28 | In reference to previous issue 16: Revise Site Plan, Sheet A102. Revise the property line and the amount of dedication and irrevocable offer of dedication (IOD). Accordingly, dedicate (not IOD) to provide 10 feet curb to property line distance along the entire site's frontage. Also, provide 4 feet of IOD along the site's entire frontage for future parkway distance requirements. Please correct plans and development summary to correctly show and state the above. |
| | | (From Cycle 6) |

3rd Review

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|---|
| <input checked="" type="checkbox"/> | 32 | All previous unchecked comments must be addressed. |
| | | (From Cycle 7) |
| <input checked="" type="checkbox"/> | 33 | Revise Cover Sheet, Sheet G001. Remove all Storm Water Quality Notes except comment 7. This is an entitlement review and construction BMPs are not reviewed at this time. |
| | | (From Cycle 7) |
| <input checked="" type="checkbox"/> | 34 | Revise WPCP Plan, Sheet A103. Add a justification for all "No" answers. |
| | | (From Cycle 7) |
| <input checked="" type="checkbox"/> | 35 | Drainage- Why is site runoff being sent through adjacent property instead of Federal Boulevard Right-of-Way? Drainage through adjacent properties requires a Private Drainage Easement and is not recommended. |
| | | (From Cycle 7) |
| <input checked="" type="checkbox"/> | 36 | Additional comments may be recommended pending further review or any redesign of this project. These comments are not exclusive. Should you have any questions or comments, please call Katie Franke at mfranke@sandiego.gov. |
| | | (From Cycle 7) |

4th Review

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-----------------|------------------|-------------------|
|-----------------|------------------|-------------------|

For questions regarding the 'LDR-Engineering Review' review, please call Louis Schultz at (619) 557-7908. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356



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| Issue | | Issue Text |
|--------------------------|-------------|---|
| Cleared? | Num | |
| <input type="checkbox"/> | SON 37 | Revise the Site Plan and Grading Plan C-1 - The visibility area triangles for the proposed driveway have been located within the proposed right of way. Per San Diego Municipal Code Diagram 113-02SS, the visibility triangles should be located at the property line. |
| | (New Issue) | |
| <input type="checkbox"/> | G 38 | Revise the Site Plan to show and dimension the proposed driveway 3 feet offset from the side property line as shown on the Grading Plan C-1. SHOW DIMENSION ON PROPOSED SITE PLAN |
| | (New Issue) | |
| <input type="checkbox"/> | G 39 | Revise the Site Plan to show the driveway extending perpendicular from the street all the way to the proposed property line. The driveway cannot be angled in the proposed right of way. REVISE THE DRIVEWAY TO BE PERPENDICULAR FROM THE STREET. |
| | (New Issue) | |
| <input type="checkbox"/> | B/G 40 | Revise the Site Plan - Approximately 5 feet of the proposed 24 foot driveway does not lead to a drive isle and conflicts with the designated accessible path. Consider site modifications to realign the drive isle with the proposed driveway. TALK TO ME TO DISCUSS |
| | (New Issue) | |
| Draft Conditions | | |
| | | PLEASE ADD THESE DRAFT CONDITIONS TO SHEET G002 WITH A NEW HEADING FOR ENGINEERING |
| Issue | | Issue Text |
| Cleared? | Num | |
| <input type="checkbox"/> | G 41 | The project proposes to export no material from the project site. Any excavated material that is exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2015 edition and Regional Supplement Amendments adopted by Regional Standards Committee. |
| | (New Issue) | |
| <input type="checkbox"/> | G 42 | The drainage system proposed for this development, as shown on the site plan, is private and subject to approval by the City Engineer. |
| | (New Issue) | |
| <input type="checkbox"/> | G 43 | Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of a current City Standard 24 ft wide driveway, adjacent to the site on Federal Blvd., satisfactory to the City Engineer. |
| | (New Issue) | |
| <input type="checkbox"/> | G 44 | Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the reconstruction of the curb, gutter, and sidewalk, adjacent to the site on Federal Blvd., as shown on exhibit A, satisfactory to the City Engineer. |
| | (New Issue) | |
| <input type="checkbox"/> | G 45 | Prior to the issuance of any building permits, the Owner/Permittee shall dedicate and improve an additional 4.47 feet to 7.10 feet of right of way on Federal Boulevard to provide a 14 foot curb-to-property-line distance, satisfactory to the City Engineer. |
| | (New Issue) | |
| <input type="checkbox"/> | G 46 | Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications. |
| | (New Issue) | |
| <input type="checkbox"/> | G 47 | Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards. |
| | (New Issue) | |





Cycle Issues

9/26/18 9:18 am

Page 9 of 14

L64A-003A

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

Review Information

| | | |
|---|--------------------------------------|-------------------------------|
| Cycle Type: 9 Submitted (Multi-Discipline) | Submitted: 08/22/2018 | Deemed Complete on 08/22/2018 |
| Reviewing Discipline: LDR-Transportation Dev | Cycle Distributed: 08/22/2018 | |
| Reviewer: Novoa, Carlos (619) 446-5493 CNovoa@sandiego.gov | Assigned: 08/23/2018 | |
| | Started: 09/13/2018 | |
| Hours of Review: 6.00 | Review Due: 09/13/2018 | |
| Next Review Method: Submitted (Multi-Discipline) | Completed: 09/13/2018 | COMPLETED ON TIME |
| | Closed: 09/19/2018 | |

- The review due date was changed to 09/18/2018 from 09/18/2018 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmnts/Regs.
- We request a 5th complete submittal for LDR-Transportation Dev on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 6 outstanding review issues with LDR-Transportation Dev (5 of which are new issues).
- Last month LDR-Transportation Dev performed 93 reviews, 86.0% were on-time, and 22.1% were on projects at less than < 3 complete submittals.

10/17 Review:

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|--|
| <input checked="" type="checkbox"/> | 9 | PLANS/PARKING-The proposed accessible space would block the access to the refuse and recyclable area. Please revise your design to remove the conflict and allow access to both. (From Cycle 6) |
| <input checked="" type="checkbox"/> | 10 | FRONTAGE-Please see Engineering Review comments number 16 and 28 and revise the property line and the amount of dedication and irrevocable offer of dedication (IOD). Accordingly, dedicate (not IOD) to provide 10 feet curb to property line distance along the entire site's frontage. Also, provide 4 feet of IOD along the sites entire frontage for future parkway distance requirements. Please correct plans and development summary to correctly show and state the above. (From Cycle 6) |

7/11/18 Review:

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|---|
| <input checked="" type="checkbox"/> | 11 | PROJECT: The proposed project is a Conditional Use Permit (CUP) for a Marijuana Outlet (MO) at 6176 Federal Boulevard. Applicant is proposing to demolish the existing approximately 2,090 sq. ft. building and operate the proposed MO within a new approximately 2,800 sq. ft. building on an approximately 1.3 acres lot in CO-2-1 zone within Encanto Community Plan Area based on the submitted plans. (From Cycle 7) |
| <input checked="" type="checkbox"/> | 12 | Trip Generation: The proposed 2800 square foot Marijuana Outlet is expected to generate approximately 700 average daily trips (ADT), at a rate of 250 trips per 1,000 square feet; with 64 AM peak hour trips (32 in, 32 out) and 112 PM peak hour trips (64 in, 64 out). An access analysis study will be required. Please contact LDR - Transportation to scope the study. (From Cycle 7) |
| <input checked="" type="checkbox"/> | 13 | Access: The proposed accessible path of travel is not acceptable. Revise the plans to include an accessible pedestrian path which does not encroach into the drive aisle or driveway. Revise plan submittal accordingly. (From Cycle 7) |
| <input checked="" type="checkbox"/> | 14 | Turnaround: The accessible parking aisle cannot be used as a turnaround space. Revise plan submittal accordingly. (From Cycle 7) |
| <input type="checkbox"/> | B 15 | Please revise CAP to be consistent with the current scope and plan submittal (From Cycle 7) |

9/13/18 Review:

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|--------------------------|------------------|---|
| <input type="checkbox"/> | G 16 | PREVIOUS UNCLEARED ISSUES: Please address all uncleared issues from previous cycles as well. These issues are still applicable to the project and have not been resolved. ACKNOWLEDGED. (New Issue) |
| <input type="checkbox"/> | G 17 | CHANGE OF SCOPE: Applicant is now proposing to demolish the existing approximately 2,090 sq. ft. building and operate the proposed MO within a new approximately 3,011 sq. ft. building. CORRECT (New Issue) |

For questions regarding the 'LDR-Transportation Dev' review, please call Carlos Novoa at (619) 446-5493. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356



Cycle Issues

9/26/18 9:18 am

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L64A-003A

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

| <u>Issue</u> | | <u>Issue Text</u> |
|--------------------------|-------------|---|
| <u>Cleared?</u> | <u>Num</u> | |
| <input type="checkbox"/> | M 18 | ACCESS ANALYSIS STUDY: We have reviewed the Transportation Access Analysis Study for the 6176 Federal Boulevard Marijuana Outlet project prepared by Mizuta Traffic Consulting. Our comments were forwarded to the Development Project Manager, EAS, and the applicants Traffic Engineer on (9/13/2018). The applicant should address all comments prior to re-submittal. (New Issue) |
| <input type="checkbox"/> | B 19 | CAP CHECKLIST: Per strategy 3, number 4, since the project is a not residential project, the project must provide more short- and long-term bicycle parking spaces than required per the City's Municipal Code. Revise The CAP and Plans accordingly (New Issue) |
| <input type="checkbox"/> | G 20 | ADDITIONAL COMMENTS (INFORMATION ONLY, NO ACTION REQUIRED): Pending a redesign and/or comments from other reviewing disciplines, LDR-Transportation staff reserves the right to provide additional comments on subsequent review cycles. (New Issue) ACKNOWLEDGED. |





Cycle Issues

9/26/18 9:18 am

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L64A-003A

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

Review Information

| | | |
|---|--------------------------------------|-------------------------------|
| Cycle Type: 9 Submitted (Multi-Discipline) | Submitted: 08/22/2018 | Deemed Complete on 08/22/2018 |
| Reviewing Discipline: LDR-Geology | Cycle Distributed: 08/22/2018 | |
| Reviewer: Mills, Kreg | Assigned: 08/23/2018 | |
| (619) 446-5295 | Started: 09/11/2018 | |
| Kmills@sandiego.gov | Review Due: 09/13/2018 | |
| Hours of Review: 2.00 | Completed: 09/11/2018 | COMPLETED ON TIME |
| Next Review Method: Conditions | Closed: 09/19/2018 | |

- The review due date was changed to 09/18/2018 from 09/18/2018 per agreement with customer.
- We request a 5th complete submittal for LDR-Geology on this project as: Conditions.
- The reviewer has requested more documents be submitted.
- Your project still has 1 outstanding review issues with LDR-Geology (3 of which are new issues).
- Last month LDR-Geology performed 81 reviews, 87.7% were on-time, and 68.5% were on projects at less than < 3 complete submittals.

520606-3 (4/6/2017)

COMMENTS:

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|---|
| <input checked="" type="checkbox"/> | 3 | The geotechnical investigation report must contain a site-specific geologic/geotechnical map that shows the distribution of fill and geologic units, location of exploratory excavations, location of cross-sections, and proposed construction. Circumscribe the limits of anticipated remedial grading on the geologic/geotechnical map to delineate the proposed footprint of the project. (From Cycle 3) |
| <input checked="" type="checkbox"/> | 5 | The project's geotechnical consultant should provide a conclusion regarding if the proposed development will destabilize or result in settlement of adjacent property or the right of way. (From Cycle 3) |
| <input checked="" type="checkbox"/> | 6 | The project's geotechnical consultant should provide a statement as to whether or not the site is suitable for the intended use. (From Cycle 3) |

520606-7 (7/2/2018)

REVIEW COMMENTS:

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|--|
| <input checked="" type="checkbox"/> | 14 | The previous review comments that have not been cleared remain applicable. (From Cycle 7) |

520606-9 (9/11/2018)

INFORMATION:

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|---|
| <input checked="" type="checkbox"/> | 15 | REFERENCES REVIEWED: Responses to City Review Comments (Cycle 7), Two-Story Commercial Building, 6176 Federal Boulevard, San Diego, California, prepared by SCST, Inc., dated August 20, 2018 (their project no. 180126N) Development Plans, 6176 Federal Boulevard, San Diego, California 92114, prepared by Techne, dated August 21, 2018 (their project no. 1626); Civil Plans prepared by Snipes-Dye Associates, dated August 20, 2018 (their job no. E0057X) |
| <input checked="" type="checkbox"/> | 16 | (New Issue) REVIEW COMMENTS: The Geology Section has reviewed the referenced geotechnical documents. Based on that review, the project's geotechnical consultant has adequately addressed the geologic site conditions at this time for the purposes of environmental review of the proposed development. (New Issue) |





Cycle Issues

9/26/18 9:18 am

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L64A-003A

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

PROPOSED DRAFT CONDITIONS:

PLEASE ADD DRAFT CONDITIONS PER GEOLOGY TO SHEET G002

| Cleared? | Issue Num | Issue Text |
|----------|-----------|------------|
|----------|-----------|------------|

| | | |
|--------------------------|------|-----------------------|
| <input type="checkbox"/> | G 17 | GEOLOGY REQUIREMENTS: |
|--------------------------|------|-----------------------|

Prior to the issuance of any construction permits (either grading or building permit), the Owner/Permittee shall submit a geotechnical investigation report prepared in accordance with the City's "Guidelines for Geotechnical Reports" that specifically addressed the proposed construction plans. The geotechnical investigation report shall be reviewed for adequacy by the Geology Section of Development Services prior to the issuance of any construction permit.

(New Issue)





Cycle Issues

9/26/18 9:18 am

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L64A-003A

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

Review Information

| | | |
|---|--------------------------------------|-------------------------------|
| Cycle Type: 9 Submitted (Multi-Discipline) | Submitted: 08/22/2018 | Deemed Complete on 08/22/2018 |
| Reviewing Discipline: LDR-Landscaping | Cycle Distributed: 08/22/2018 | |
| Reviewer: Neri, Daniel | Assigned: 09/04/2018 | |
| (619) 687-5967 | Started: 09/19/2018 | |
| Dneri@sandiego.gov | Review Due: 09/13/2018 | |
| Hours of Review: 2.00 | Completed: 09/19/2018 | COMPLETED LATE |
| Next Review Method: Submitted (Multi-Discipline) | Closed: 09/19/2018 | |

- The review due date was changed to 09/18/2018 from 09/18/2018 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmnts/Regs.
- We request a 5th complete submittal for LDR-Landscaping on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 4 outstanding review issues with LDR-Landscaping (3 of which are new issues).
- Last month LDR-Landscaping performed 59 reviews, 83.1% were on-time, and 40.0% were on projects at less than < 3 complete submittals.

2nd Review - 9/29/2017

| Cleared? | Issue | |
|-------------------------------------|-------|--|
| | Num | Issue Text |
| <input checked="" type="checkbox"/> | 13 | Site Design Change: Per applicant response to comments, the project has been completely redesigned from the previous submission. Staff has cleared all previous issues and provided new comments below to respond to the new landscape/site plan. |
| | | (From Cycle 6) |
| <input checked="" type="checkbox"/> | 14 | Street Trees [142.0409]: Tree species shall be selected from the Neighborhood Street Tree list as shown in the Encanto Community Plan. Acceptable species include: Platanus racemosa, Jacaranda mimosifolia, Callistemon citrinus, and Olea europaea "Swan Hill". Applicant has selected Quercus agrifolia, which is not on the approved community plan list. Please provide a written response for selecting the Quercus. Staff will need to confer with Long Range Planning. |
| | | (From Cycle 6) |
| <input checked="" type="checkbox"/> | 15 | Street Yard Bioswale: Please clearly show the limit of the bioswale in the Street Yard. Staff needs to understand the location, and whether this is a fully lined bioswale, as this will affect tree placement. |
| | | (From Cycle 6) |
| <input checked="" type="checkbox"/> | 16 | Remaining Yard: The remaining yard is the area between the Property Line and the 10-ft. setback lines along the west and north property lines. Therefore, this area shall be correctly represented on the Landscape Area Calculation Diagram, and the correct square footage must be used to calculate the required Remaining Yard Planting Area and Points. |
| | | (From Cycle 6) |
| <input checked="" type="checkbox"/> | 17 | Remaining Yard - Required Planting Area: Note that per 142.0403, only those planting areas that measure 30-sq. ft. or greater, with no dimension less than 3-ft, can be counted towards required planting area. |
| | | (From Cycle 6) |
| <input checked="" type="checkbox"/> | 18 | Parking Stall Dimensions: Please clearly mark the required 18-ft parking stall dimension, and clearly show how much of the required depth is in the allowable landscape overhang area. |
| | | (From Cycle 6) |
| <input checked="" type="checkbox"/> | 19 | VUA Trees: As the depth of the parking stall is partially made up of the allowable landscape overhang area, please adjust the trees to line up with the parking stall striping, such that the trees are not directly in front of a parked vehicle. This will reduce the likelihood of damage as the tree will be between stalls. |
| | | (From Cycle 6) |
| <input checked="" type="checkbox"/> | 20 | VUA/Planting Area Protection: Please show a raised 6-inch curb or wheel stops to demonstrate that the planting area is protected from vehicles. |
| | | (From Cycle 6) |

For questions regarding the 'LDR-Landscaping' review, please call Daniel Neri at (619) 687-5967. Project Nbr: 520606 / Cycle: 9





Cycle Issues

9/26/18 9:18 am

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L64A-003A

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|-------------------------------------|------------------|---|
| <input checked="" type="checkbox"/> | 21 | General Note #2 (Sht. LDP-1): Please revise to read: "Maintenance: All required landscape areas shall be maintained by owner. Landscape and irrigation areas in the public right-of-way shall be maintained by owner. The landscape areas shall be maintained free of debris and litter, and all plant material shall be maintained in a healthy growing condition. Diseased or dead plant material shall be satisfactorily treated or replaced per the conditions of the permit." |
| | | (From Cycle 6) |
| <input checked="" type="checkbox"/> | 22 | General Note #6 (Sht. LDP-1): Please revise to specify 3-inches of mulch, as required by 142.0413(c), rather than 2-inches. |
| | | (From Cycle 6) |

3rd Review - 7/9/2018

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|--------------------------|------------------|---|
| <input type="checkbox"/> | SAM 3 | Applicant resubmitted plans with an old landscape plan dated 10.28.16, before the site design changes. Staff is unable to complete review as no issues have been addressed. |
| | | (From Cycle 7) |

4th Review - 9/19/2018

| <u>Cleared?</u> | <u>Issue Num</u> | <u>Issue Text</u> |
|--------------------------|------------------|---|
| <input type="checkbox"/> | SAM 24 | Site Plan vs. Landscape Plan/Grading Plan (A102a, A102b, LDP-1): Site Plan does not match site layout in Landscape Plan or Grading Plan. Plans must match. |
| | | (New Issue) |
| <input type="checkbox"/> | SAM 25 | Locations of Sewer Laterals (Sht. C-1, LDP-1): Locations of utilities does not correspond. Civil and Landscape trades must be coordinated. Note that placement of utilities may not preclude the placement of required trees. Therefore, the separation distances must be carefully identified on this discretionary permit. Any change to location of utilities during ministerial review will not be supported and will delay permit process. |
| | | (New Issue) |
| <input type="checkbox"/> | SON 26 | Legend (C-1): Symbols for Existing Sewer and Exisint Water are mixed up an do not correspond. |
| | | (New Issue) |





Cycle Issues

9/26/18 9:19 am

Page 1 of 1

L64A-003A

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

Project Information

Project Nbr: **520606** Title: Federal Blvd MMCC
Project Mgr: Cac, Cheryl (619) 236-6327 ccac@sandiego.gov



Review Information

Cycle Type: 11 Community Planning Group (Sub) **Submitted:** Deemed Complete on 09/26/2018
Reviewing Discipline: Community Planning Group **Cycle Distributed:**
Reviewer: Daly, Tim **Assigned:** 09/26/2018
(619) 446-5356 **Started:** 09/26/2018
TPDaly@sandiego.gov **Review Due:** 10/17/2018
Hours of Review: 0.50 **Completed:** 09/26/2018 **COMPLETED ON TIME**
Next Review Method: Submitted (Multi-Discipline) **Closed:** 09/26/2018

- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 5th complete submittal for Community Planning Group on this project as: Submitted (Multi-Discipline).
- Your project still has 2 outstanding review issues with Community Planning Group (all of which are new).
- Last month Community Planning Group performed 84 reviews, 57.1% were on-time, and 36.1% were on projects at less than < 3 complete submittals.

Encanto

| Issue | | |
|----------------------------|-----|---|
| Cleared? | Num | Issue Text |
| <input type="checkbox"/> A | 4 | Please contact the Chair for the Encanto Neighborhoods Community Planning Group, (as identified in the assessment letter) to make arrangements to present your project for review at their next available meeting. This Community Planning Group is officially recognized by the City as a representative of the community, and an advisor to the City in actions that would affect the community. The Development Services Department has notified the group of your request and has sent them a copy of your project plans and documents. (New Issue) |
| <input type="checkbox"/> A | 5 | Prior to scheduling your project for public hearing, please provide a copy of the full group's final recommendation, including the vote count and any additional conditions recommended by the group. (New Issue) |





Submittal Requirements

9/26/18 9:31 am

Page 1 of 1

L64A-001

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

Project Information

Project Nbr: **520606** Title: Federal Blvd MMCC
Project Mgr: Cac, Cherlyn (619)236-6327 ccac@sandiego.gov



Review Cycle Information

Review Cycle: 12 Submitted (Multi-Discipline) Opened: 09/26/2018 9:29 am Submitted:
Due: Closed:

Required Documents:

| <u>Package Type</u> | <u>Pkg Qty</u> | <u>Document Type</u> | <u>Qty Needed</u> |
|---|----------------|---|-------------------|
| Development Plans | 7 | Applicant Response to Issues | 7 |
| Climate Action Plan Consistency Checklist | 4 | Climate Action Plan Consistency Checklist | 4 |
| Development Plans | 7 | Site Development Plans | 7 |
| Traffic Study | 3 | Traffic Study | 3 |





Invoice

9/26/18 9:17 am

Page 1 of 1

L64A-007

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

Invoice Number: 861532



Status: Invoiced

Issued: 09/26/2018 9:16 am Daly, Tim

Voided:

Customer: Berry, Rebecca

Development: 327754 Devel Num 327754

Project: 520606 Federal Blvd MMCC

PM: Cac, Cherlyn

(619)236-6327



Project Fees:

| <u>Fee Description</u> | <u>Quantity</u> | <u>Units</u> | <u>Fee Amount</u> |
|------------------------|-----------------|--------------|-------------------|
| Deposit Account | 14,245.00 | Dollars | \$-14,245.00 |
| Deposit Account | 20,645.00 | Dollars | \$20,645.00 |

Approval Total: \$6,400.00

Job Total: \$6,400.00

Project Total: \$6,400.00

Invoice Total: \$6,400.00



EXHIBIT J

| | |
|-------------|----------------------------|
| Court's Ex. | 038 |
| Case # | 37-2017-00010073-CU-BC-CTL |
| Rec'd | |
| Dept. | C-73 Clk. |

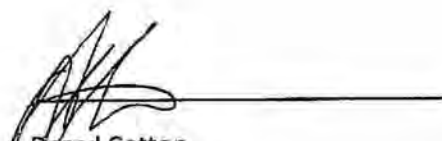
11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.


Larry Geraci


Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Gerao,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

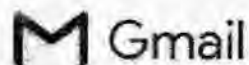
Signature

Jessica Newell

(Seal)



EXHIBIT K



Darryl Cotton <indagroddarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcSD.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

Regards.

Darryl Cotton, President



darryl@inda-gro.com
www.inda-gro.com
Ph: 877.452.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

[Quoted text hidden]

Court's Ex. **042**
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. **C-73** Clk. _____

EXHIBIT L



Darryl Cotton <Indagroddarryl@gmail.com>

Federal Blvd Property

Larry Geraci <Larry@tfcisd.net>
To: Darryl Cotton <darryl@inda-gro.com>

Mon, Feb 27, 2017 at 8:49 AM

Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8079e39521b...> 4/26/2017

BER0091

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

 **17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf**
347K

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("**Agreement**") is made and entered into this ____ day of _____, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("**Seller**"), and 6176 FEDERAL BLVD TRUST dated _____, 2017, or its assignee ("**Buyer**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. **DEFINITIONS.** For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property"**: That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. **"Date of Agreement"**: The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price"**: The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars (\$400,000.00).

d. **"Due Diligence Period"**: The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. **"Escrow Agent"**: The Escrow Agent is: [NAME]

f. **"Title Company"**: The Title Company is: [NAME]

g. **"Title Approval Date"**: The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. **"Closing", "Closing Date" and "Close of Escrow"**: These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. **"Notices"** will be sent as follows to:

Buyer: 6176 Federal Blvd. Trust
6176 Federal Blvd.

San Diego, California 92114

Attn:

Fax No.:

Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110,

Seller:

Darryl Cotton
Address:
City, State, Zip
Attn:
Fax No.:
Phone No.:

Escrow Agent: [NAME]
[ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "**Improvements**"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "**Intangibles**"). (Reference herein to the "**Property**" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

a. Deposit. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "**Escrow**") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "**Buyer's Indemnity**" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "**Preliminary Title Report**"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("**Mandatory Cure Items**").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("Property Information"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exist any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "**Buyer's Representatives**") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Seller's loss of income prior to closing.

14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the “**Deed**”).

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the “**Reporting Person**” for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

- (1) All premiums for an ALTA Standard Coverage Title Policy;
- (2) One-half of all escrow fees and costs;
- (3) Seller's share of prorations; and
- (4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

- (1) All document recording charges;
- (2) One-half of all escrow fees and costs;
- (3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;
- (4) One-half of all transfer taxes; and
- (5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

Seller's Initials

Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "**Escrow Cancellation Charges**"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (1/2) of any Escrow Cancellation Charges.

18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "**Exchange**") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

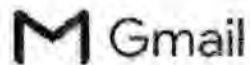
w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

EXHIBIT M



Darryl Cotton <indagroddarryl@gmail.com>

Statement

Larry Geraci <Larry@tfcisd.net>
To: Darryl Cotton <darryl@inda-gro.com>

Thu, Mar 2, 2017 at 8:51 AM

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Court's Ex. **062**
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. **C-73** Clk. _____

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8feeb8924dfa...> 4/26/2017

BER0111

Trial Ex. 062-001

recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

 **17-0227 Side Agreement unsigned.docx**
35K

<https://mail.google.com/mail/u/0/?ui=2&ik=505ebcf73f&view=pt&msg=15a8fee68924dfa...> 4/26/2017

BER0112

SIDE AGREEMENT

Dated as of March ___, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars (\$400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I

1. Terms of the Side Agreement

1.1. Buyer shall pay Four Hundred Thousand Dollars (\$400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: _____, with the routing number or swift code of: _____, located at the following bank and address: _____.

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

3.6. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3.11. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. Invalidity and Waiver. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:
